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LEGISLATIVE JOURNAL
OF THE
STATE OF NEBRASKA

EIGHTY-SEVENTH LEGISLATURE
SECOND SPECIAL SESSION

1982

Convened November 5, 1982

Adjourned November 13, 1982

LINCOLN, NEBRASKA

Compiled

Under Authority of the Legislature

by

PATRICK J. O'DONNELL, CLERK

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LEGISLATURE

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1	R. Wiley Remmers.....	Auburn.....	Farmer/ Legislator.....	Gage*, Nemaha, Pawnee, Richardson
2	Calvin F. Carsten.....	Avoca.....	Farmer.....	Cass*, Johnson*, Otoe*
3	Emil E. Beyer, Jr.....	Gretna.....	Real Estate..... Investments	Sarpy*
4	Larry D. Stoney.....	Omaha.....	Insurance.....	Douglas*
5	Bernice Labedz.....	Omaha.....	Public Relations/ Falstaff Brewing Corp.	Douglas*
6	Peter Hoagland.....	Omaha.....	Attorney.....	Douglas*
7	Karen Kilgarin.....	Omaha.....	Real Estate.....	Douglas*
8	Vard Johnson.....	Omaha.....	Attorney/Legal Aid Society.	Douglas*
9	Marge Higgins.....	Omaha.....	Insurance Agent.....	Douglas*
10	Carol Pirsch.....	Omaha.....	Supervisor/Public Relations.	Douglas*
11	Ernie Chambers.....	Omaha.....	Barber.....	Douglas*
12	Gerald D. Koch.....	Ralston.....	Exec. Sec./Omaha..... Suburban Area Council of Schools	Douglas*
13	Dave Newell.....	Omaha.....	State Senator.....	Douglas*
14	Walter J. Duda.....	Omaha.....	Farmer.....	Douglas*
15	Lowell C. Johnson.....	North Bend.....	Business/Farming/ Engineer	Dodge*
16	James E. Goll.....	Tekamah.....	Auto Dealer.....	Burt, Cuming*, Thurston, Washington
17	Merle Von Minden.....	Allen.....	Farmer.....	Dakota, Dixon, Wayne*
18	Harry Chronister.....	Schuyler.....	Agri-Businessman.....	Colfax, Cuming*, Dodge*, Stanton

Dist.	Name	Address	Occupation	Counties
19	Elroy M. Hefner.....	Coleridge.....	Business Executive.....	Cedar, Knox, Pierce*, Wayne*
20	Glenn A. Goodrich.....	Omaha.....	Electrical Contractor.....	Douglas*
21	Richard Peterson.....	Norfolk.....	Beekeeper.....	Madison, Pierce*
22	Donald N. Dworak.....	Columbus.....	Insurance Executive.....	Boone*, Nance, Platte*
23	Loran Schmit.....	Bellwood.....	Farmer/Livestock.....	Butler, Platte*, Polk*, Saunders*
24	Harold F. Sieck.....	Pleasant Dale.....	Farmer.....	Polk*, Seward, York
25	Jerome Warner.....	Waverly.....	Livestock, Farming.....	Cass*, Johnson*, Lancaster*, Otoe*, Saunders*
26	Donald Wesely.....	Lincoln.....	Worker.....	Lancaster*
27	Steve Fowler.....	Lincoln.....	Consultant.....	Lancaster*
28	Chris Beutler.....	Lincoln.....	Attorney.....	Lancaster*
29	Shirley Marsh.....	Lincoln.....	Homemaker.....	Lancaster*
30	George "Bill" Burrows.....	Adams.....	Farmer.....	Gage*, Jefferson*, Saline*
31	Steve Wiitala.....	Omaha.....	Teacher.....	Douglas*
32	Shari Apking.....	Alexandria.....	Homemaker/ Newspaper Columnist.....	Fillmore, Jefferson*, Saline*, Thayer
33	Richard D. Marvel.....	Hastings.....	Professor/ Political Science	Adams
34	Maurice A. Kremer.....	Aurora.....	Farmer/Businessman.....	Clay, Hamilton, Merrick, Nuckolls*, Polk*
35	Howard L. Peterson.....	Grand Island.....	Development Officer/ Stuhr Museum	Hall*
36	Ron Cope.....	Kearney.....	Business/Farming.....	Buffalo*, Hall*
37	Martin Kahle.....	Kearney.....	Retired Farmer.....	Buffalo*, Franklin, Kearney, Nuckolls*, Webster

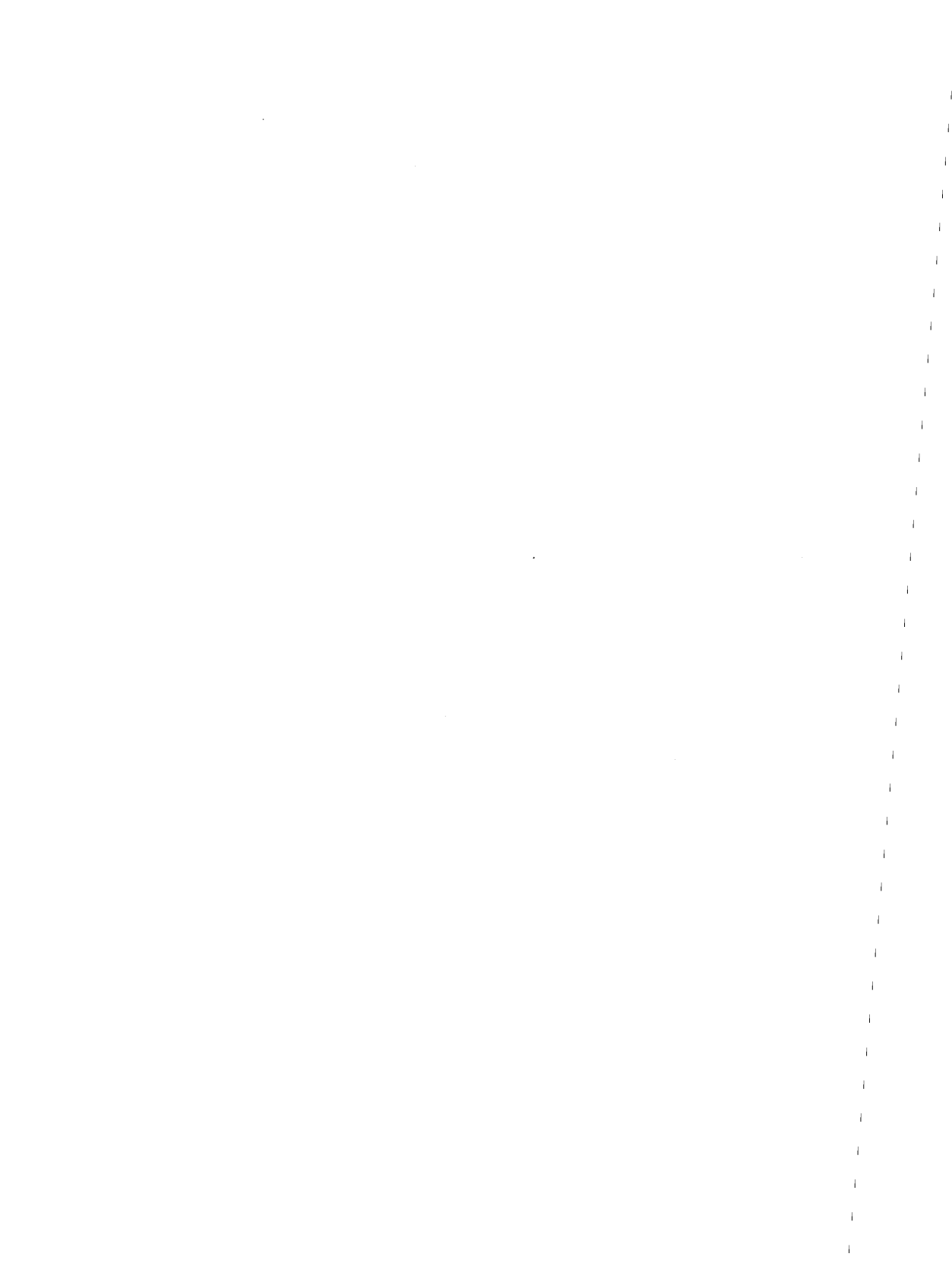
Dist.	Name	Address	Occupation	Counties
38	Tom Vickers.....	Farnam.....	Stockman.....	Frontier, Furnas, Gosper, Harlan, Hayes*, Red Willow
39	Bill Barrett.....	Lexington.....	Real Estate/Insurance.....	Buffalo*, Dawson, Phelps
40	John DeCamp.....	Neligh.....	Attorney/Speculator.....	Antelope, Boone*, Boyd, Holt
41	Donald L. Wagner.....	Ord.....	Farmer.....	Custer*, Garfield, Greeley, Hall*, Howard, Loup Sherman, Valley, Wheeler
42	Myron Rumery.....	North Platte.....	Retired.....	Custer*, Lincoln
43	Howard A. Lamb.....	Anselmo.....	Rancher.....	Blaine, Brown, Cherry, Custer*, Hooker, Keya Paha, Logan, McPherson, Rock, Thomas
44	Rex S. Haberman.....	Imperial.....	Farm Manager.....	Arthur, Chase, Deuel, Dundy, Garden, Hayes*, Hitchcock, Keith, Perkins
45	George Fenger.....	Bellevue.....	Real Estate.....	Sarpy*
			Owner	
46	Dave Landis.....	Lincoln.....	State Senator.....	Lancaster*
47	Robert L. Clark.....	Sidney.....	Merchant.....	Banner, Cheyenne, Kimball, Morrill, Scotts Bluff*
48	William E. Nichol.....	Scottsbluff.....		Scotts Bluff*
49	Samuel K. Cullan.....	Hemingford.....	Farmer.....	Box Butte, Dawes, Sheridan, Sioux, Grant

Clerk

Patrick J. O'Donnell.....Lincoln

RULES OF THE LEGISLATURE

Rules in effect at the commencement of the Eighty-Seventh Legislature, Second Special Session, 1982, are the same rules in effect at the commencement of the Eighty-Eighth Legislature, First Session, 1983 except as amended by rule changes adopted the second day of the Special Session on November 8, 1982.



FIRST DAY - NOVEMBER 5, 1982
LEGISLATIVE JOURNAL
EIGHTY-SEVENTH LEGISLATURE
SECOND SPECIAL SESSION

FIRST DAY

Legislative Chamber, Lincoln, Nebraska
Friday, November 5, 1982

Pursuant to a proclamation by His Excellency, Charles Thone, Governor of the State of Nebraska, the Eighty-seventh Legislature, Second Special Session assembled in the West Legislative Chamber of the State Capitol, at the hour of 10:04 a.m., Friday, November 5, 1982, and was called to order by President Roland A. Luedtke.

PRAYER

The prayer was offered by Dr. Robert Palmer, Westminster Presbyterian Church, Lincoln, Nebraska.

Presentation of colors by the Nebraska National Guard Ceremonial Unit.

DECLARATION

Members of the Legislature:

Pursuant to a proclamation issued by the Honorable Charles Thone, Governor of Nebraska, we are here and now assembled in the 87th Legislature, 2nd Special Session of the Nebraska Legislature. I, as President, declare that we are now open for the transaction of business.

(Signed) Roland A. Luedtke
President

ROLL CALL

The roll was called and all members were present except Messrs. Marvel, Rumery, Vickers, and Mrs. Marsh who were excused.

PROCLAMATION

BY VIRTUE OF THE AUTHORITY VESTED in the Governor

LEGISLATIVE JOURNAL

by Section 8, Article IV, of the Constitution of the State of Nebraska, I, Charles Thone, as Governor of the State of Nebraska, believing that an extraordinary occasion has arisen, DO HEREBY CALL the Legislature of Nebraska to convene in extraordinary session at the State Capitol on Friday, November 5, 1982, at 10:00 o'clock a.m., for the purpose of considering and enacting legislation relating to the following subjects:

1. Reduce appropriations approved by the 87th Legislature 2nd Session; and

2. Lapse cash and revolving funds to the State General Fund.

I DIRECT that members of the Legislature of the State of Nebraska be notified of the convening of this extraordinary session by mailing to each of them a copy of this Proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nebraska to be affixed this 15th day of October, 1982.

(Signed) CHARLES THONE
Governor

(SEAL)
Attest

(Signed) Ralph Englert
Deputy Secretary of State

CERTIFICATE

Barbara Brunkow being first duly sworn says that she is the secretary for Charles Thone, Governor of the State of Nebraska; that on October 15 and 16, 1982, she sent by United States Mail, a copy of the Governor's Proclamation issued on October 15, 1982 calling for a special session of the Nebraska Legislature to all members of the Nebraska Legislature 87th Session.

(Signed) Barbara Brunkow

SUBSCRIBED and sworn to before me this 19th day of October, 1982.

(Signed) Peggy Pohlmann
Notary Public

Commission expires November 12, 1984.

CERTIFICATE

I, Allen J. Beermann, Secretary of State of the State of Nebraska do hereby certify that the attached is a true and correct copy of the Official Roster of Members of the Nebraska Unicameral Legislature elected or appointed to serve in the Extraordinary Session called by Governor Charles Thone on October 15, 1982 to convene on November 5, 1982.

Further, I hereby certify that the Members so listed on the Official Roster attached hereto are the duly elected or appointed Members of the Unicameral Legislature in the State of Nebraska for the Extraordinary Session.

Finally, I hereby certify that all election returns, abstracts, canvass and appointment records with reference to said members are on file in the office of the Secretary of State and are a matter of public record.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State of Nebraska.

Done at Lincoln this fifth day of November in the year of our Lord, one thousand nine hundred and eighty-two.

(Signed) Allen J. Beermann
Secretary of State
(Signed) Ralph Englert
Deputy

(SEAL)

Members of Nebraska Unicameral
Legislature, Extraordinary Session

1 R. Wiley Remmers	2 Calvin Carsten	3 Emil E. Beyer, Jr.
4 Larry Stoney	5 Bernice Labedz	6 Peter Hoagland
7 Karen Kilgarin	8 Vard Johnson	9 Marge Higgins
10 Carol McBride Pirsch	11 Ernie Chambers	12 Gerald Koch
13 Dave Newell	14 Walter J. Duda	15 Lowell C. Johnson
16 James E. Goll	17 Merle Von Minden	18 Harry B. Chronister
19 Elroy M. Hefner	20 Glenn A. Goodrich	21 Richard Peterson
22 Donald N. Dworak	23 Loran C. Schmit	24 Harold F. Sieck
25 Jerome Warner	26 Don Wesely	27 Steve Fowler
28 Chris Beutler	29 Shirley Marsh	30 George Bill Burrows
31 Steve Wiitala	32 Sharon Apking	33 Richard D. Marvel
34 Maurice A. Kremer	35 Howard L. Peterson	36 Ron Cope
37 Martin F. Kahle	38 Tom Vickers	39 William E. Barrett
40 John DeCamp	41 Donald L. Wagner	42 Myron G. A. Rumery
43 Howard A. Lamb	44 Rex Haberman	45 George Fenger

46 David M. Landis
49 Samuel K. Cullan

47 Robert L. Clark

48 William E. Nichol

PROCLAMATION

Amendment of Call for Extraordinary Session

I, Charles Thone, Governor of the State of Nebraska, hereby amend the call for an extraordinary session of the Legislature of Nebraska made on October 15, 1982, to include in addition to the subjects enumerated therein, the following subjects:

3. Amend laws relating to the collection of sales tax and use tax, but only for the purpose of providing for an earlier date upon which sales tax and use tax shall become due and payable to the Tax Commissioner.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nebraska to be affixed this fourth day of November, 1982.

(Signed) CHARLES THONE
Governor

(SEAL)
Attest

(Signed) Allen J. Beermann
Secretary of State

CERTIFICATE

Barbara Brunkow being first duly sworn says that she is the secretary for Charles Thone, Governor of the State of Nebraska; that on November 4, 1982; she personally delivered a copy of the Governor's "Proclamation Amendment of Call for Extraordinary Session," issued on that said date to the offices of all members of the Nebraska Legislature 87th Session.

(Signed) Barbara Brunkow
Subscribed and sworn to before me this 4th day of November, 1982.

(Signed) Peggy L. Pohlmann
Notary Public
Commission expires November 12, 1984

MOTION - Election of Officers

Mr. Kremer moved that the following officers be elected to serve for the

87th Legislature, 2nd Special Session:

Clerk of the Legislature
Asst. Clerk of the Legislature
Sergeant-At-Arms
Chaplain Coordinator

Patrick J. O'Donnell
Richard Brown
Ray R. Wilson
Dr. Robert E. Palmer

The motion prevailed.

MOTION - Adopt Temporary Rules

Mr. Wesely moved that the Rules in effect on the 60th Legislative Day of the 87th Legislature, 2nd Session, be adopted for today only, November 5, 1982.

The motion prevailed with 35 ayes, 0 nays, and 14 not voting.

MOTION - Approve Membership

Mr. Cope moved that the membership of the committees of the 87th Legislature be continued in this the 2nd Special Session and that the membership of all standing, select and special committees be the same as during the 87th regular session.

The motion prevailed.

MOTION - Notify Governor

Mr. Lamb moved that the President appoint a committee of five to notify the Governor that the Legislature is now convened, organized, and ready for the transaction of business and to return with any message the Governor may have for this, the Second Special Session of the Eighty-Seventh Legislature.

The motion prevailed.

The Chair appointed Messrs. Warner, Carsten, Von Minden, L. Johnson, and Mrs. Apking to serve on said committee.

EASE

The Legislature was at ease from 10:18 a.m. until 10:25 a.m.

The committee escorted Governor Charles Thone to the rostrum where he delivered the following message:

MESSAGE TO THE LEGISLATURE

Mr. President, Mr. Speaker, members of the 87th Nebraska Legislature and distinguished guests.

As you all know, the purpose of this special session of the Legislature is to cut the budget and take certain other actions so that state tax rates will not have to be increased.

It was my position in the campaign, and it is my position now, that tax rates should not be increased to offset revenue shortfalls caused by the recession we have been experiencing.

Such an increase would not be fair to the taxpayers, and such an increase can most definitely be avoided if you will adopt the measures I shall present today.

I am confident that the strong economic signs we see herald a recovery already underway from this national recession.

On November 3, 1982, an already strong stock market soared to a new record high.

Interest rates have very noticeably declined in recent months from all-time unconscionable highs, and we can reasonably hope for further significant drops that are crucial to continuing economic advance.

Housing sales have demonstrated the effect of declining rates by rising in September to their highest level since May, 1981.

The combined package of necessary spending reductions and sales tax administration changes I am presenting you today will enable you to avoid unnecessary tax increases.

This package is within the expected range of revenue estimates that will be provided Senator Warner on November 9, 1982, as he requested.

As yet, the latest national information on economic indicators is not available.

My proposal today provides for 25.3 million dollars in spending cuts and approximately 5 million dollars in lapses from various revolving and cash funds to the state's General Fund.

In addition, I have amended the special session call and prepared legislation to require faster payment of sales and use tax collections to the state.

This measure, which does not increase taxes, will make an estimated 14 million dollars of funds available to the General Fund this fiscal year.

If this measure is adopted, these funds can be used to provide an additional financial cushion, which some may feel is needed, or they can be used to reduce the amount of spending cuts which I have proposed.

Personally, I remain convinced that a very strong economic recovery is beginning and that with fiscal restraint, the state's real needs can be met well into the future without the need for tax increases.

The basic philosophy that underlies the recommendations I am presenting to you today is one of fairness and equity.

I have excluded very, very few programs or activities from the reductions I propose.

In fact, only about 10 percent of the budget has been excluded.

The major exemptions are direct care costs in the Department of Public Institutions, including a major portion of mental retardation aid, adult services in the Department of Corrections, direct care costs at the school for the deaf and the school for the visually handicapped and the salaries of enforcement officers in the State Patrol.

For the remaining General Fund programs I am recommending a 3 1/2 percent reduction across the board.

This proposal will not require a further delay in the January 1, 5 percent pay increase for state employees.

Since the announcement of this special session just three weeks ago, much of the discussion has revolved around the question of reducing the "aid" portion of the budget.

Cries have been loud that we cannot reduce aid because that would certainly lead to an increase in property taxes.

I do not agree.

Local governments are as capable of cutting spending as state government is.

I am confident they will have the support of their constituents in doing so.

In the matter of spending, the Nebraska Constitution makes it clear that the Legislature shall have the final authority.

You in your collective wisdom must evaluate my proposal and others that I am sure will come before you.

This will be my last appearance before you to present a message to the Legislature.

Let me take this opportunity to personally thank each of you for your service to the people of Nebraska.

Like me, some of you will not be back next year.

I would like to recognize those senators at this time: Senator Larry Stoney, Senator George "Bill" Burrows, Senator Ron Cope, Senator Gerald Koch, Senator Shari Apking, Senator Myron Rumery, Senator Walter Duda, Senator Maurice Kremer, and Senator Don Dworak.

Also, I would like to thank my department heads and my staff for their hard work and loyal service to, and for me, and all Nebraskans. The many sacrifices they have made are little noticed, but much appreciated.

My budget proposals are now before you.

I recommend their adoption.

The final decision is for you to make.

I will end my administration, as I began it, with a pledge to cooperate with you to act in the best interest of all Nebraskans.

The committee escorted the Governor from the Chamber.

BILLS ON FIRST READING

The following bills were read for the first time by title:

LEGISLATIVE BILL 1. By Lamb, 43rd District.

This bill introduced on behalf of: at the request of the Governor.

A BILL FOR AN ACT relating to appropriations; to amend Laws 1982, LB 761, sections 3 to 18, 20, 21, 23 to 29, 31 to 35, 37, 38, 44 to 53, 60, 61, 63 to 67, 70 to 80, 82, 107, 109, 116, 120, 127, and 133, Laws 1981, LB 163, section 3, as last amended by Laws 1982, LB 761, section 118, Laws 1982, LB 255A, section 1, Laws 1982, LB 604A, section 1, Laws 1982, LB 714A, section 1, Laws 1982, LB 816A, sections 1, 2, and 4 to 6, and Laws 1982, LB 854A, section 1; to reduce appropriations; to provide transfers from certain funds to the General Fund; to repeal the original sections, and also Laws 1982, LB 761, section 132; and to declare an emergency.

LEGISLATIVE BILL 2. By Lamb, 43rd District.

This bill introduced on behalf of: at the request of the Governor.

A BILL FOR AN ACT to amend section 77-2708, Reissue Revised Statutes of Nebraska, 1943, relating to revenue and taxation; to change the due date for sales and use taxes as prescribed; to provide an operative date; to repeal the original section; and to declare an emergency.

EASE

The Legislature was at ease from 10:45 a.m. until 11:11 a.m.

REFERENCE COMMITTEE REPORT

The Legislative Council Reference Committee hereby submits the following report of referral of Legislative Bills 1 and 2.

Legislative Bills 1 and 2 were referred to General File.

(Signed) Howard Lamb, Chairperson
Legislative Council Executive Board

NOTICE OF COMMITTEE HEARINGS **Revenue**

There will be an information meeting of the Revenue Committee on Monday, November 8th, at 2:00 in Room 1520.

Appropriations & Revenue

There will be a joint informational meeting of the Revenue and Appropriations Committees on Tuesday, November 9th, at 3:00 in Room 1520.

(Signed) Calvin Carsten, Chairperson
Committee on Revenue

Appropriations
Room 1517 - State Capitol

Monday, November 8, 1982

9:00 - 12:00 a.m.

Public and State Agency Testimony on 1982-83 Appropriations

University of Nebraska
Board of Trustees of Nebraska State Colleges
State Colleges

Agency Numbers 03 through 48

12:00 - 1:30 p.m. - Lunch

1:30 - 5:00 p.m. - Continuation of Morning Testimony

Tuesday, November 9, 1982

9:00-12:00 a.m.-Continuation of Monday Testimony

Public and State Agency Testimony on 1982-83
Appropriations - Agency Numbers 52 through 95

12:00 - 1:30 p.m. - Lunch

1:30-5:00 p.m.-Continuation of morning Testimony

Evening - Committee Executive Session

Wednesday, November 10, 1982

9:00 a.m. - Continuation of Committee Executive Session, if necessary

(Signed) Jerome Warner, Chairperson

BILL ON FIRST READING

The following bill was read for the first time by title:

LEGISLATIVE BILL 3. By Koch, 12th District.

This bill introduced on behalf of: subdivision of State of Nebraska.

A BILL FOR AN ACT to amend section 77-3424, Reissue Revised Statutes of Nebraska, 1943, relating to revenue and taxation; to change budget limitation provisions as prescribed; to repeal the original section; and to declare an emergency.

VISITORS

Visitors to the Chamber were Brigadier General Mohamed Sheikh Osman and son Maikal Mohamed Sheikh Osman from Mogadishu, Somalia.

ADJOURNMENT

At 11:12 a.m., on a motion by Mr. Lamb, the Legislature adjourned until 10:00 a.m., Monday, November 8, 1982.

Patrick J. O'Donnell
Clerk of the Legislature

SECOND DAY - NOVEMBER 8, 1982**LEGISLATIVE JOURNAL****EIGHTY-SEVENTH LEGISLATURE
SECOND SPECIAL SESSION****SECOND DAY**

Legislative Chamber, Lincoln, Nebraska
Monday, November 8, 1982

Pursuant to adjournment, the Legislature met at 10:03 a.m., President Luedtke presiding.

PRAYER

The prayer was offered by Assoc. Pastor Paul E. Hoffman, Grace Lutheran Church, Lincoln, Nebraska.

ROLL CALL

The roll was called and all members were present except Messrs. Hoagland, Kremer, Marvel, Rumery, Sieck, and Mrs. Marsh who were excused; and Messrs. V. Johnson, Koch, Remmers, Mrs. Labedz, and the Appropriations Committee who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the First Day was approved.

MOTION - Adopt Rules

Mr. Wesely moved that the Rules in effect on the 60th Legislative Day of the 87th Legislature, 2nd Session, except for Rule 6, Section 2(b), be adopted for the balance of the 87th Legislature, Second Special Session.

Mr. Landis offered the following amendment to the Wesely motion:
A motion to adjourn sine die shall be debatable.

The Landis amendment lost with 20 ayes, 4 nays, 9 present and not voting, and 16 excused and not voting.

The Wesely motion prevailed with 25 ayes, 2 nays, 6 present and not voting, and 16 excused and not voting.

ANNOUNCEMENT

Mr. H. Peterson distributed packages of cornnuts to the members and announced that Cornnuts, Inc. will be locating a new plant in Grand Island.

ATTORNEY GENERAL'S OPINIONS

Opinion No. 257
May 18, 1982

Dear Senator Goodrich:

In your letter of May 3, 1982, you call our attention to the amendment of Neb.Rev.Stat. Sec.77-2704 (Supp. 1981) effected by LB 278. This amendment provides that when a written contract exists for a fixed price for a construction, reconstruction, alteration, or improvement project and the sales tax rate is increased during the term of the contract, the contractor may apply for a refund of the increased taxes paid for the purchase of materials incorporated into the project. This bill was passed without the emergency clause and will become effective July 17, 1982.

LB 757 was passed with the emergency clause, was approved by the Governor on April 14, 1982, and became effective on that date. It increased the sales tax rate from 3 percent to 3 1/2 percent. Your question is whether the refund provisions of LB 278 apply to the tax increase provided for by LB 757. You request the opinion because it will influence your decision as to whether you will propose further amendments at the next session of the Legislature. We conclude that such refund provisions do not apply.

In Wheelock & Manning OO Ranches, Inc. v. Heath, 201 Neb. 835, 272 N.W.2d 768 (1978), the court said: "A legislative act will operate only prospectively and not retrospectively, unless the legislative intent and purpose that it should operate retrospectively is clearly disclosed." In our opinion, the event that triggers the operation of LB 278 is an increase in the sales tax rate. If the event occurs before LB 278 is effective, it cannot, in our opinion, act as such a trigger, unless LB 278 is construed retrospectively. There is no language in the bill to justify such a construction.

We point out that were we to hold that the tax increase mandated by LB 757 were to be the basis for a refund, there would be contracts which would be completely finished during the period from April 14, 1982, to July 17, 1982, and yet would qualify for the refund. If this were true, any tax increases within the period of the statute of limitations for applying for a refund would also be a basis for such a refund. (We

realize that, historically, there have been no such increases during that period, but we cannot base our construction of statutory language on such an historical fact.)

We could, perhaps, construe LB 278 to require the contract to be entered into subsequent to the effective date of the bill. We do not do so, because of the language of the amendment, which speaks of "when a contract exists," which could include a contract existing on the effective date of the act. On the other hand, the amendment speaks of when "the sales tax is increased," which gives more of a sense of future action. Retrospective application would be more appropriately expressed by such language as "the sales tax has been, or is, increased."

Therefore, while the language of LB 278 is not entirely clear as to the legislative intention, we conclude that there is no language showing an intent to give the bill retrospective effect, and that the tax increase must occur after the effective date of the bill, although the contract may have been entered into before that date.

Very truly yours,
PAUL L. DOUGLAS
Attorney General
Ralph H. Gillan
Assistant Attorney General

(Signed)

RHG:ejg

cc: Mr. Patrick J. O'Donnell
Clerk of the Legislature

June 9, 1982

Dear Senator Clark:

In your letter of May 18, 1982, you inform us that the Northwestern Bell Telephone Company has requested that you seek our opinion on a number of questions. Ordinarily, we decline to provide legal research and render opinions for private entities. In this case, however, you have indicated that depending upon our opinion, you may wish to introduce legislation, and on that basis and for that purpose we offer our opinion on the questions you raise.

You first ask whether or not the Nebraska law prohibits a corporation from granting a leave of absence without pay or benefits to an employee who runs for public office or who takes part in the campaign of another who is running for public office. We are aware of no provision of Nebraska law which would prohibit such activity on the part of a corporation.

You next ask if an employee is elected or appointed to public office, is there anything under Nebraska law which would prohibit a corporation from granting a leave of absence to the employee and then

paying him an amount equal to that which he would lose by accepting the salary of the public office. Without stating any opinion as to whether or not such an arrangement would be acceptable to the Political Accountability and Disclosure Commission, we are aware of no direct provision of Nebraska law which would prohibit such an arrangement.

You next ask whether or not it would make any difference if the individual performed any duties for the corporation while they were being so compensated. Once again, without expressing an opinion as to whether or not such an arrangement would be acceptable to the Political Accountability and Disclosure Commission, we are aware of no provision of Nebraska law which would directly prohibit an elected official performing duties for a corporation during the time he was elected. We do caution however in this regard, that many of the elective and appointive political positions are considered to be full time, and difficulties might be encountered by an individual who attempted to perform services for a corporation while he was being compensated by the public to perform other duties and services.

You next ask whether or not there is anything within the Nebraska law which would prohibit a corporation from continuing an employee's benefits if not his wages, during a leave of absence granted to hold public office. Here again, without rendering an opinion as to the acceptability of such a practice to the Political Accountability and Disclosure Commission, we are aware of no direct statutory provision which would prohibit such an arrangement.

Finally, you ask whether or not in our opinion a corporation's decision to encourage employees to look into political positions would be unacceptable to the Political Accountability and Disclosure Commission. We specifically decline to speculate as to any position that Commission might reach on any question and suggest that such inquiries be tendered to them directly.

Finally, in passing, we note that you are inquiring with reference to a corporation which is regulated by the Public Service Commission at least with respect to its rates. If an employee of this corporation were seeking the office of Public Service Commissioner, the provisions of Neb.Rev.Stat. Sec.75-102 (Reissue 1976), would be applicable. This section prohibits any commissioner from having any interest in any common carrier regulated by the Public Service Commission. Therefore, at least with respect to this office and this corporation, there would be a conflict. Generally however, we express no opinion as to whether or not any of the other practices mentioned in your letter or referred to herein, would be acceptable to the Public Service Commission or would be any way violative of their rules and regulations. Here again we suggest that you or this corporation may wish to present those questions directly to them for their consideration.

SECOND DAY - NOVEMBER 8, 1982

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Sincerely,
PAUL L. DOUGLAS
Attorney General
(Signed) Terry R. Schaaf
Assistant Attorney General

TRS:ekj
cc: Patrick J. O'Donnell
Clerk of the Legislature

April 29, 1982

Mrs. Joanne M. Pepperl
Revisor of Statutes
State Capitol, Room 1010
Lincoln, Nebraska 68509

Dear Mrs. Pepperl:

You have asked us two questions concerning LB 761 and line item vetoes made by the Governor. You refer us to Subsection 2 of Section 27. In that section, the appropriation approved by the Legislature is \$8,337,730. That amount is lined out and the amount \$8,466,000 is written in, and the Governor's initials are attached thereto. You ask what to do with this matter in that it appears the Governor has attempted to increase an appropriation made by the Legislature. Obviously, under Article IV, Section 15, no such power exists. We have also checked with the appropriate administrative officers and have confirmed that that particular action was a scrivener's error. We believe that you may safely ignore the interlineation of the amount appropriated by the Legislature, \$8,337,330, in the printed volume of the session laws and simply leave that amount intact as passed by the Legislature.

In your second question you refer us to Section 93 where the Governor has drawn lines through certain dates and written in new dates. Section 93 contains in essence, advisory language. It directs that the raises for certain classes of individuals shall be given on October 1, 1982. The Governor has interlineated that date out and in its place, substituted the date January 1, 1983. We are informed that the Governor has exercised his line item veto power to reduce agency appropriations by an amount equal to that required to fund a five percent raise from October 1, 1982, until January 1, 1983.

The action of the Governor reducing the agency budget amounts established by the Legislature for particular departments and programs reduce the appropriation to the level necessary to fund a five percent increase commencing on January 1, 1983, to the end of the fiscal year. We believe that you may either show the date of October 1, 1982,

or show that date lined out and the date January 1, 1983, substituted in its place by the Governor.

The effective action is that which reduce appropriations to amounts sufficient to fund the five percent increase commencing January 1, 1983, and that action is the action that will control over any advisory date adopted by the Legislature in Section 93, or the Governor.

Very truly yours,
PAUL L. DOUGLAS
Attorney General
(Signed) Patrick T. O'Brien
Assistant Attorney General

PTO:cw

Opinion No. 265
July 8, 1982

Dear Senator Clark:

In a letter dated May 25, 1982, you called our attention to the provisions of Neb.Rev.Stat. Sec.19-609 (Reissue 1977) and sought our opinion as to whether or not the 20 percent requirement of Neb.Rev.Stat. Sec.19-605 (Reissue 1977) providing for the inception of the city manager plan of government was applicable to placing the question of abandonment before the voters.

In a letter dated June 9, 1982, we indicated that Neb.Rev.Stat. Sec.19-609 (Reissue 1977) was silent on the question of what percentage of the electorate was necessary to cause the calling of such an election on the question of abandonment and suggested that you introduce legislation to clarify the matter.

You have now called our attention to the provisions of Neb.Rev.Stat. Sec.19-662 (Reissue 1977) and ask whether or not an amendment would be necessary given this language.

This section was not part of the original act but was added by the Nebraska Legislature in 1974, provides as is pertinent to your question.

Whenever electors of any city, equal in number to thirty per cent of those who voted at the last regular city election, shall file a petition with the city clerk, asking that the question of abandoning the plan of government provided by the provisions of Chapter 19, Article 6, be submitted to the electors thereof. . .

It would appear as though the Legislature in 1974 corrected the original oversight and made provisions in this section for the percentage requirement for the calling of such election. The only matter which would therefore need any clarification is the matter of the definition of "this act" found in Neb.Rev.Stat. Sec.19-601 (Reissue 1977). There the term "act" is defined as Sections 19-601 to 19-661.

Since the word "act" is found within Neb.Rev.Stat. Sec.19-609, it

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may be that the next time general amendments are considered to this act, that consideration be given to amending Neb.Rev.Stat. Sec.19-601 to incorporate within the definition Neb.Rev.Stat. Sec.19-662 (Reissue 1977).

Sincerely,
PAUL L. DOUGLAS
Attorney General
(Signed) Terry R. Schaaf
Assistant Attorney General

TRS:pjs
cc: Patrick O'Donnell
Clerk of the Legislature

July 14, 1982

Dear Senator DeCamp:

This is in response to your letter of June 28, 1982, in which you state that you intend to introduce legislation pertaining to vital resource crises, and ask whether a mayor may declare a vital resource crisis for his or her jurisdiction, and whether the Governor may transfer his administrative authority regarding such resource crisis to a mayor.

As you have pointed out in your letter, Neb.Rev.Stat. Sections 84-162 to 84-167 (Supp. 1980) are the sections pertaining to vital resource emergencies in the State of Nebraska. Of particular importance within that series of sections is Sec.84-166 which provides, insofar as relevant to this discussion, that when a Governor has declared a vital resource emergency (pursuant to Sec.84-164), that Governor may "... Delegate any administrative authority vested in him or her to the State Energy Office or any other state agency or its respective director. . . ." However, that section does not allow for delegation by the Governor of his authority to any mayor or other local official in the event of a vital resource emergency.

We are not aware of any other statutory provision which would allow the Governor to delegate such authority, nor are we aware of any statutory provisions which would allow for a mayor to assume such administrative responsibility or declare a vital resource emergency.

Very truly yours,
PAUL L. DOUGLAS
Attorney General
(Signed) Frank J. Hutfless
Assistant Attorney General

FJH/cmb/w4
cc: Patrick J. O'Donnell

Clerk of the Legislature

Opinion No. 267
July 15, 1982

Dear Senator Warner:

This is in reply to your inquiry concerning the interpretation of Neb.Rev.Stat. Sec.2-101 (Supp. 1981) as it concerns the election of members of the Nebraska State Board of Agriculture. It is our understanding that you wish to determine whether or not there is a need for any clarifying legislation.

Neb.Rev.Stat. Sec.2-101, as it now applies to the election of the State Board of Agriculture, provides as follows: "The president and delegates shall at this meeting elect suitable persons to fill all vacancies in the state board."

As originally enacted in 1879, what is now Sec.2-101 provided in part as follows:

There shall be held at the capital of the state, on the third Tuesday in January of each year, a meeting of the state board of agriculture, together with the president of each county society, or delegate therefrom duly authorized, who shall for the time being be ex-officio members of the state board of agriculture, for the purpose of deliberating and consulting as to the wants, prospects and condition of the agricultural interests throughout the state. And at such annual meeting the several reports from the subordinate societies shall be delivered to the president of the state board; and the said president and delegates shall at this meeting elect suitable persons to fill all vacancies in the state board.

You will specifically note that the original act referred to "the president of the state board" and "said president." In 1943, at the time the Legislature amended the statute to provide that the board could hold or dispense with the holding of the fair, it also struck the word "said" preceding "president and delegates."

Without the benefit of any legislative history beyond the singular fact of the change, our conclusion would be that "said president" originally meant president of the state board, but when the word "said" was deleted the Legislature meant for president to have a meaning different from president of the state board and probably meant president (of the county societies).

This change, standing alone, would then result in the conclusion that the state board would be elected by the presidents of the county societies, and a delegate from each county not represented by its president.

However, in 1937 the Legislature deleted the word "said" preceding "president shall have power to call meetings of the board." In our opinion, if you then give "president" the same meaning in both

instances a number of questions are raised regarding legislative intent which we are unable to reconcile.

Unless the possibility of conflict and meaning of "president" can be reconciled in some way not apparent to us, it might be a matter which the Legislature should clarify.

Very truly yours,
PAUL L. DOUGLAS
Attorney General
Bernard L. Packett
Assistant Attorney General

(Signed)

BLP:kkh
cc: Patrick J. O'Donnell
Clerk of the Legislature

Opinion No. 269
July 29, 1982

Dear Senator Chambers:

In your letter of July 5, 1982, you asked whether there is any constitutional impediment to the repeal of Neb.Rev.Stat. Sec.8-148.03 (Reissue 1977), which provides: "Bonds of the State of Israel are hereby made securities in which banks, savings and loan associations, insurance companies, and credit unions may properly and legally invest funds." We can conceive of no constitutional impediment to such repeal. In 1974 the Legislature determined that it wished to authorize the designated financial institutions to invest in bonds of the State of Israel. If, in 1983, it determines that it no longer wishes to authorize such institutions to make such investments, certainly that is within the legislative power of the Legislature.

You also ask a second question which is more difficult. You ask what the legal effect of such a repeal would be on existing investments in the bonds. In other words, upon repeal of Sec.8-148.03, would institutions which had purchased such bonds pursuant to that section be required to divest themselves of such bonds, or could they continue to hold them to maturity? We have found no clear-cut answer to that question.

We have checked the statutes with respect to banks, savings and loan associations, and credit unions, and find no specific provision dealing with the continued holding of securities lawfully acquired, where the authority to purchase them was withdrawn after their acquisition.

With respect to insurance companies, Neb.Rev.Stat. 44-311.01 (Reissue 1978) casts some light on the subject, although there is some question as to the result even there. This section provides: "Nothing in this act shall prohibit any such insurance company retaining any mortgages, bonds, debentures, or other securities now owned by it, if

the investment therein by such company was authorized by law at the time of the acquisition thereof."

This section could be narrowly construed to mean only that securities lawfully acquired before the date of the passage of the act of which Sec.44-311.01 was a part (1945) could be retained pursuant to that section, since the statute speaks of "securities now owned by it," and a contention could be made that the word "now" limits the application of the statute to securities held on the effective date of the act. However, it does tend to negate an intention that the holdings of an insurance company are necessarily limited to investments authorized to be made under the terms of the act.

Whether the financial institutions involved would be required to dispose of Israeli bonds, or could continue to hold them until maturity is entirely a question of Legislative intent. In the absence of any language requiring disposition of bonds purchased before the repeal of Sec. 8-148.03, we would be inclined to take the position that they could continue to hold them. However, we point out that it would be most unwise for the Legislature to leave this matter for speculation, and the uncertainties of the decision of the Supreme Court. It would be a very simple matter for the Legislature, if it repeals Sec. 8-148.03, to provide either that any financial institution having acquired such bonds pursuant to that section could hold them to maturity, or, if that is the Legislature's desire, that such bonds be disposed of within a specified time after the effective date of the act.

Very truly yours,
PAUL L. DOUGLAS

Attorney General

(Signed)

Ralph H. Gillan

Assistant Attorney General

RHG:cw

cc: Patrick J. O'Donnell

Clerk of the Legislature

2018 State Capitol

Lincoln, Nebraska 68509

Opinion No. 271
September 1, 1982

Dear Senator Kilgarin:

This will acknowledge our receipt of your recent letter which pertains to a letter you wrote this office on May 7, 1982, in which you asked three questions which pertain to alleged altering of the practice of "open admissions" at the University of Nebraska. The same is hereinafter discussed.

Perhaps some preliminary remarks are in order. First, the writer of

this letter is the person to whom your letter of May 7, 1982, was assigned. Shortly after receiving that letter, I called your office and in your absence told a member of your staff that there had been a death in my family and therefore I would appreciate an extension of time if a formal response were expected. At that time, I also told that member of your staff that the University of Nebraska had not altered the practice of "open admissions" and therefore the questions presented were technically moot and consequently I would hold your request, in the event you had no objections, a reasonable time to ascertain the extent, if any, the admissions practices were subsequently altered. Recently, a member of your staff called and I informed the caller that to my knowledge the admissions policy of the University of Nebraska had not been altered but I would check on the same and report my findings. Shortly thereafter, we received your recent letter.

As of the date of this letter, we wish to inform you that the admissions policy of the University of Nebraska have yet to be altered. Thus, technically your questions are still moot. However, it is our understanding that the same is on the agenda of the Board of Regents at its meeting on September 10, 1982. It is also our understanding that the proposed admissions policy to be considered at that time is not one of open or closed admissions per se or one based on predetermined grades a student must obtain in high school or one based upon the student's scholastic ranking among other graduates of the same or different high schools. Rather, it is our understanding the proposed admissions policy to be considered on September 10, 1982, would merely require incoming freshman students to have successfully completed certain high school subjects. It is also our understanding if that admissions policy is adopted, it would not be effective until the fall term of 1986. While the three questions you have asked are technically moot, we can offer you the following general comments which pertain thereto.

First, you ask if the Legislature could constitutionally amend Neb.Rev.Stat. Sec.85-112 (Reissue 1981) to provide a specific admissions policy. Our opinion is not entirely free of doubt but it would appear that it could. Whether the second sentence in section 1 of Article VII of the Constitution of Nebraska would have any bearing thereon would have to be determined in light of any such amendment.

Second, you ask if a private citizen could sue the University of Nebraska to contest the legality of its admissions policy. The answer to this question depends on whether the private citizen has standing. The law of standing is very complex and without knowing what legal qualifications the specific private citizen possesses and what legal issues such a person would attempt to assert, we cannot answer this question. We can tell you that it is doubtful if the University of Nebraska could be "taken to court" by a "state agency, board or commission which in its statutory charter is not specifically delegated the power to sue."

Third, you inquire of the constitutionality of any admissions policy

enforced by a state university which could be shown to significantly place certain classes of citizens in an unfair advantage in seeking admission to the university. The critical unknown fact here is the undisclosed "unfair advantage" such an admissions policy would place on certain classes of citizens. In other words, class legislation per se is not ipso facto unconstitutional. On the other hand, class legislation may be unconstitutional depending upon the specific governmental statute or regulation and how or in what manner the same discriminates against a specific class of citizens.

Very truly yours,
PAUL L. DOUGLAS
Attorney General
(Signed) Harold Mosher
Assistant Attorney General

HM/cmb/wl
cc: Patrick J. O'Donnell
Clerk of the Legislature

September 3, 1982

Dear Senator Haberman:

In a recent letter to this office you state that you are contemplating introducing legislation pertaining to technical community colleges. In connection therewith, you ask if the Board of a Technical Community College has the authority to offer free tuition to board members, their spouses, and dependents.

We have examined the statutory framework of technical community colleges and note that Neb.Rev.Stat. Sec.79-2644(16) (Reissue 1981) grants the Technical Community College Board of Governors of each technical community college area the power to:

[E]stablish tuition rates for courses of instruction offered by each college within its area. Separate tuition rates shall be established for students who are nonresidents of the State of Nebraska.

However, in examining the above described statutes we find no authority whereby said board could legally offer free tuition to board members, their spouses, or dependents. We are therefore of the opinion that your question must be and is answered no.

Very truly yours,
PAUL L. DOUGLAS
Attorney General
(Signed) Harold I. Mosher
Assistant Attorney General

HIM:cw

cc: Patrick J. O'Donnell
Clerk of the Legislature

September 7, 1982

Dear Senator Hefner:

You have advised this office that several Boards of Educational Service Units, on their own initiative and not by statute, have established procedures or bylaws which require an affirmative vote of a super majority of the members of the Board to enact or change any Board policy and which require a majority of the members for a quorum and to transact other business. You then ask several questions based on the premise that there is no statute governing this matter. In connection therewith you state that you also realize that legislation may be needed in order to clarify the entire issue, however you cannot address the situation legislatively until you are positive whether a present legal condition or regulation applies and how it applies. Your questions are hereinafter discussed.

1. If a ten member ESU Board establishes a procedure whereby seven affirmative votes are needed to change or enact Board policies, and if a motion made in an official meeting of the board, on an issue on the agenda, to change or enact a policy receives only six affirmative votes, has the policy effectively, officially or legally been changed or enacted, i.e., does this supersede Board policy? If yes, is this proper?

There must, of course, be compliance with constitutional, statutory, or charter provisions fixing the number or proportion of votes required a governing body of a municipal corporation to act. However, in the absence of a statutory provision thereon, there is case law which holds that such a body may determine for itself the number of votes required for it to elect a particular officer or to pass a particular measure. 62 C.J.S., Municipal Corporations, Sec.404 (1949). Thus it would appear if a ten member ESU Board has established a procedure whereby seven affirmative votes are needed to change or enact Board policies, and if a motion made in an official meeting of the board to change or enact a policy receives only six affirmative votes, the policy has not legally been changed.

2. Same facts as above but the Board enforces that attempted change or enactment of policy as having been actually and properly changed or enacted, what legal recourse, if any, is available to ensure that an ESU Board follows and adheres to its own adopted procedures?

It appears to us that the only effective legal recourse to the facts stated

in question 2, above, is for a person who has standing to bring an appropriate action in the courts.

Very truly yours,
PAUL L. DOUGLAS
Attorney General
(Signed) Harold I. Mosher
Assistant Attorney General

HIM:cw
cc: Patrick J. O'Donnell
Clerk of the Legislature

Opinion No. 275
September 17, 1982

Re: Neb.Rev.Stat. Sec. 39-669.26(4)

Dear Senator Fowler:

You have requested an opinion from this office concerning the introduction of legislation to clarify Neb.Rev.Stat. Sec.39-669.26(4) (Reissue 1978) which provides that:

In order to prevent and eliminate successive traffic violations, there is hereby provided a point system dealing with traffic violation as disclosed by the files of the Director of Motor Vehicles. The following point system shall be adopted:

....
(4) Failure to stop and render aid as required under the laws of this state or any city or village ordinance in the event of a motor vehicle accident resulting in property damage if such accident is reported by the owner or operator within twelve hours from the time of the accident--4 points, otherwise--8 points, and for purposes of this subdivision a telephone call or other notification to the appropriate peace officers shall be deemed to be a report;

The question you have posed is whether or not an individual who is involved in a one-car accident should be assessed points against his driving record when there is no involvement by or damage to a second party. In particular, you have asked whether or not there should be a separation of offenses, namely, that of failing to report an accident and failure to stop and render aid. It would appear that the language of this particular section is vague and ambiguous in that "failure to stop and render aid" implies the existence of an injured party or parties to an accident. However, the statute as presently drafted refers only to "property damage" and makes no distinction as to those circumstances in which no second party is injured or damaged.

Neb.Rev.Stat. Sec. 60-505 (Reissue 1978) requires that an accident report be filed with the Department of Motor Vehicles regarding any

"accident within this state, in which any person is killed or injured or in which damage to an apparent extent in excess of \$250 is sustained to the property of any one person, including such operator, . . ." Thus it is clear that an accident report is required for a one-car accident when the property damage exceeds \$250 despite the lack of involvement by or injury to a second party. Further, Neb.Rev.Stat. Sec. 60-506 provides that the failure to provide such a report or to correctly give the information required is a Class V Misdemeanor.

Neb.Rev.Stat. Sec. 39-6,104.01 imposes a duty upon an operator to stop and render aid upon involvement in any motor vehicle accident in this state. A violation thereof constitutes a Class I Misdemeanor pursuant to Neb.Rev.Stat. Sec.39-6,104.03. To the extent that the Legislature has seen fit to distinguish between failure to report an accident and failure to stop and render aid, it would seem that a similar distinction should be made in the assessment of points against the driving record of an individual. It is the opinion of this office that corrective legislation would be appropriate to clarify the assessment of points between these two situations.

Very truly yours,
PAUL L. DOUGLAS
Attorney General

(Signed) Ruth Anne E. Galter
Assistant Attorney General

REG:kkh

cc: Patrick J. O'Donnell
Clerk of the Legislature

September 21, 1982

Dear Senator Barrett:

By letter dated August 25, 1982, you inquired of this office concerning the constitutionality of an act to amend Neb.Rev.Stat. Sec. 48-649 relating to the determination of contribution rates to be applied to employers for unemployment insurance purposes.

Currently the law provides for a 2.7 percent contribution rate. As amended, the law would require "new" employers to pay the greater of 2.7 percent or the average industry contribution rate. In order to determine the average industry contribution rate for a particular employer, the Commissioner of Labor would first be required to assign the employer to standard industrial classifications, which the proposed amendment defines as the "two digit major groups provided in the Standard Industrial Classification Code, in accordance with established classification practices found in the Standard Industrial Classification Manual issued by the Executive Office of the President,

Office of Management and Budget.”

You have indicated that your concern is that the proposed procedure of having the commissioner assign employers to the standard industrial classifications may constitute an unconstitutional delegation of legislative authority.

It is our opinion that giving the commissioner the responsibility of assigning employers to an industrial classification would not be improper in this case, assuming the Standard Industrial Classification Manual referred to in the proposal provided adequate guidance concerning the exercise of the commissioner’s authority. In Board of Regents of the University of Nebraska v. County of Lancaster, 154 Neb. 398, 403, 48 N.W.2d 221, 224 (1951), it was said that:

The exercise of a legislatively-delegated authority to make rules . . . for the complete operation and enforcement of law with designated limitations, is not an exclusive legislative power. It is administrative in its nature and its use by administrative agencies is usually essential to the complete and wise exercise of the power in the accomplishment of the purpose which the Legislature intended. Consequently, the courts are not inclined to interfere with rules established by legislative direction where they bear a reasonable relation to the subject of the legislation and constitute a reasonable exercise of the powers conferred.

In order for such delegation of authority to be valid, the limitations on the powers conferred and the standards by which they are to be exercised must be clearly stated in the statute. Lincoln Dairy Company v. Finigan, 170 Neb. 777, 104 N.W.2d 227 (1960).

Insofar as the specificity of such standards are concerned, we have examined the 1972 edition of the Standard Industrial Classification Manual and find that it lists somewhat self-explanatory two-digit major groups numbered consecutively from 01 to 97 plus a non-classifiable two-digit group numbered 99. Appendix D of the manual contains some guidelines for classification, as does the preface to each division, the divisions each containing several major classifications. The introduction of the manual also contains instructions for classification. The aforementioned standards would probably be considered sufficient to guide the commissioner in the exercise of his newly acquired authority.

It should perhaps be noted that in the Lincoln Dairy case, our Supreme Court held that it was an improper delegation of authority to the Director of the Department of Agriculture and Inspection for the director to be statutorily authorized to adopt minimum standards for the processing and marketing of milk where the only standard guiding the director was that his regulations were to generally comport with the Milk Ordinance and Code--1953 recommendations of the Public Health Service. In making its decision, the court noted that the

ordinance and code referred to were recommendations only and had not been promulgated as regulations by any department of the United States government and their content could only be established by extrinsic evidence. The Standard Industrial Classification Manual appears to be on the same footing as the milk ordinance and code. Extrinsic evidence would need to be offered to prove the manual's contents as well. It is believed, however, that there are two important distinctions between the Lincoln Dairy case and the present circumstance. First, the statute which was held unconstitutional indicated that the director's regulations were to "comply generally" with the Milk Ordinance and Code whereas the commissioner is to assign employers "in accordance with" the manual. Therefore, the manual is more than a mere guideline; it sets the standard for the commissioner's exercise of authority. Also, unlike the situation presented by the proposed legislation, in the Lincoln Dairy case a violation of the director's regulations was a criminal offense, thereby resulting in the director having the power to define a crime, which the court held was the exclusive province of the Legislature.

You have also requested that we address other constitutional issues which may reveal themselves in our review of the proposed legislation. Our principle concern with the proposal is that it may be considered unconstitutionally vague. Although the "void for vagueness" doctrine is more strictly applied to penal statutes, it is applicable to civil statutes as well. In the Interest of D.L.H. 198 Neb. 444, 253 N.W.2d 283 (1977). The commissioner is required to abide by the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, in assigning employers to particular classifications. The 1972 publication of this manual which we have reviewed is a book that had at least one edition previous to 1972. It was assembled by the Statistical Policy Division of the President's Office of Management and Budget. It was for sale at the time of publication by the Superintendent of Documents, United States Government Printing Office in Washington, D.C., for \$8.80. It does not appear that it is a regulation of any federal agency. We suspect that the Superintendent of Documents or the Statistical Policy Division of the Office of Management and Budget would have to be contacted to be certain that the 1972 edition was current.

In Rhodes v. Continental Insurance Company, 180 Neb. 10, 141 N.W.2d 415 (1966), the court considered that a statute was sufficiently definite even though it adopted the 1943 New York Standard Fire Insurance Form by reference. That form was well-known to all carrying on the business of insurance. Although the Standard Industrial Classification Manual represented itself as being used by United States government agencies, state agencies, trade associations, private business and other organizations, we are unable to say whether it is as well-known by employers in this state as the 1943 New York

Standard Fire Insurance Form is known to those in the insurance business. Perhaps it would be sufficient if the Commissioner of Labor were familiar with the Standard Industrial Classification Manual as he is the one who has to abide by it. Nevertheless, we are somewhat uncomfortable with the possibility that certain employers may have no knowledge of the manual, its contents, or how to gain access to it. These employers would be incapable of verifying that their designation to a particular classification code, which designation would potentially increase their liability for unemployment insurance contributions, was correct.

The lack of a date for the governing Standard Industrial Classification Manual in the proposal increases the uncertainty as the commissioner would have to rely on information outside the statute to determine which edition of the manual was the current one at the time of the bill's enactment. Contributing to the bill's vagueness is the reference to the "Standard Industrial Classification Code." Instead of being a reference to a collection of laws as the context and name would suggest, it is apparently simply a reference to the numbering system found in the Standard Industrial Classification Manual.

One other area of concern arises due to the application of a contribution rate in excess of 2.7 percent when the average industry wide contribution rate is greater than that amount but not reducing the contribution rate below 2.7 percent for other "new" employers when their average industry wide contribution rate is less than that amount. If a safety buffer is required for "new" employers in an industry with an average contribution rate of less than 2.7 percent, then why is one not required for "new" employers in an industry with an average contribution rate of greater than 2.7 percent? These questions could give rise to a claim under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution or Article III, Section 18 of the Nebraska Constitution. However, if there is any rational basis for this distinction it will most likely withstand an equal protection attack.

Very truly yours,
PAUL L. DOUGLAS
Attorney General

(Signed) Mark D. Starr
Assistant Attorney General

MDS:cw
cc: Patrick J. O'Donnell
Clerk of the Legislature

September 23, 1982

Re: Insanity Defense

Dear Senator Haberman:

Some time ago you referred to this office a packet of materials concerning Idaho's recently enacted changes in the insanity defense law. Pursuant to our telephone conversation with your staff, we assume that you are considering introducing similar legislation in the State of Nebraska and are concerned about the constitutionality of the Idaho approach. After careful analysis, we believe that the Idaho approach would probably pass constitutional muster.

Certain elements of the insanity defense appear to be constitutionally protected. This is most evident in cases from the only two states that have previously attempted to totally eliminate the defense. In State v. Strasburg, 60 Wash. 106, 110 P. 1020 (1910), the court held that the attempt to eliminate the defense and insanity violated Section 14 of the state constitution which provided, "No person shall be deprived of life, liberty, or property except by due process of law." The court stated that when the mind of the defendant is so diseased that he cannot be said to have a criminal intent or the specific intent necessary to commit a particular crime, then such insanity as a defense is a fundamental part of criminal jurisprudence. In Sinclair v. State, 161 Miss. 142, 132 So. 581 (1931) the court also held that the insanity defense was protected by the state constitution. The necessity of criminal intent to a prosecution was held to be required by notions of fundamental fair play. The court held that the constitutional right to due process of law would be violated by excluding from the jury proof that the defendant could not understand the nature and quality of his act. Additional cases could be cited. Suffice it to say that the Sinclair and Strasburg rationale has been consistently followed.

The Idaho insanity law professes to eliminate the insanity defense by Sec. 18-207(a) of the Idaho Code which states, "mental condition shall not be a defense to any charge of criminal conduct." That subsection, standing alone, would probably be unconstitutional for the reasons stated in the cited cases. However, subsection (c) of the cited section provides that, "nothing herein is intended to prevent the admission of expert evidence on the issue of mens rea or any state of mind which is an element of the offense, subject to the rules of evidence." Thus, even under Idaho's new insanity law, a person who does not have the mental ability to form criminal intent or the specific intent necessary to commit a particular crime could not be found guilty. Interpreted thusly, the Idaho law probably passes constitutional muster. We note that passage of such a law in Nebraska may not substantially change the outcome of a criminal case as it exists under current law. However, that issue is beyond the context of this opinion.

Sincerely,
PAUL L. DOUGLAS

PAUL L. DOUGLAS
Attorney General
(Signed) Martel J. Bundy
Assistant Attorney General

MJB:kkh
cc: Patrick J. O'Donnell
Clerk of the Legislature

Opinion No. 277
September 24, 1982

Dear Senator Kilgarin:

This is in response to your letter of 15 September 1982 in which you note our response of 1 September 1982 to three questions you asked of us in connection with admissions standards at the University of Nebraska. One of those three questions was whether the Legislature could constitutionally amend Neb.Rev.Stat. Sec. 85-112 (Reissue 1981) to provide a specific admissions policy in "light of Article VII, section 10, of the Constitution of Nebraska--and the Supreme Court's interpretation of the Article viz-a-viz legislative authority in Board of Regents v. Exon (199 Neb. 146) and Board of Regents v. Lancaster County (155 Neb. 398)?" In connection therewith you also inquired if the second sentence of section 1 of Article VII of the Constitution of Nebraska had any "bearing on this matter?"

In response to the above stated questions we advised you on 1 September 1982 that our opinion was not entirely free of doubt but it would appear the Legislature could constitutionally amend Neb.Rev.Stat. Sec. 85-112 (Reissue 1981) to provide a specific admissions policy. At that time we also advised you whether the second sentence in section 1 of Article VII of the Constitution of Nebraska would have any bearing thereon would have to be determined in light of any such amendment. In your letter of 15 September 1982 you (1) request a discussion of our "doubt" and (2) offer a proposed amendment to Neb.Rev.Stat. Sec. 85-112 (Reissue 1981). The same are hereinafter discussed.

(1) Reasons for Doubt

The cases of Board of Regents v. Exon, *supra*, and Board of Regents v. Lancaster County, *supra*, are helpful in analyzing the questions you propounded but are not, strictly speaking, squarely on point. Nor are we aware of any cases which are squarely on point. Hence, we advised you on 1 September 1982 that our opinion was not entirely free of "doubt" but it would appear that the Legislature could constitutionally amend Neb.Rev.Stat. Sec. 85-112 (Reissue 1981) to provide a specific admissions policy.

(2) Proposed Amendment

In your letter of 15 September 1982 you ask us to presume an amendment to Neb.Rev.Stat. Sec. 85-112 (Reissue 1981) which would delete the first sentence therein and would substitute the word "shall" for "may" in the second sentence. Hence, under your proposal, this statute would be amended to read as follows:

~~Students seeking admission to any college of the University of Nebraska, shall, precedent to admission, complete such requirements as may be prescribed by the Board of Regents, and no applicant who shall fail to pass an examination in any part of such requirements shall be admitted. Applicants completing requirements in schools accredited by the university may shall be admitted without examination. Applicants for advanced standing may be admitted under rules prescribed in the discretion of the board.~~

You also state that the above proposal is but an approximate, but your basic idea is to remove from Neb.Rev.Stat. Sec. 85-112 (Reissue 1981) the apparent grant of authority to the Board of Regents to prescribe whatever admissions criteria it wishes.

At the outset it must be noted that under the Enabling Act of Congress and the Constitution of 1867 the Legislature had the duty to establish a state university and to provide for it a proper and adequate government. In referring to that duty, the court in the case of Regents v. McConnell, 5 Neb. 423 (1877), stated:

Under both the enabling act of Congress, and the constitution of the state, it was the duty of the legislature to establish a state university, and provide for it a polity, proper and adequate for the government of such an institution.

Id. at 426.

In 1875 the people amended the Constitution and directed that the general government of the University was to be vested in the Board of Regents. Hence, the obligation of the Legislature to establish a state university and provide for it a "polity, proper and adequate" for its government continued to exist, but by the Constitution of 1875 the people provided that the governing power for the University must be vested in the Board of Regents, and, under those conditions imposed by both the Enabling Act of Congress and the Constitution, the people authorized the Legislature to participate in providing, by law, powers and duties for the Board of Regents. "Thus, although the Legislature may add to or subtract from the powers and duties of the Regents, the general government of the University must remain vested in the Board of Regents and powers or duties that should remain in the Regents cannot be delegated to other officers or agencies." Board of Regents v. Exon, supra, 199 Neb. at 149. In other words, the Legislature can add to the powers and duties of the Board of Regents and it can take away powers and duties provided it leaves the Board of Regents with "a polity, proper and adequate" for the government of the University.

Applying the above principles to your proposed amendment to Neb.Rev.Stat. Sec. 85-112 (Reissue 1981), it appears to us that the Legislature may provide for the education of persons who are not between the ages of five and twenty-one years in certain educational institutions other than the University (provided such educational institutions are owned and controlled by the state or a political subdivision thereof), but the Legislature must leave the Board of Regents with "a polity, proper and adequate" for the government of the University. Thus, the ultimate question is whether your proposed amendment is constitutional. We think not. First, there is a question as to the meaning of the phrase "schools accredited by the university" in the proposed amendment. Second, the proposed amendment appears to eliminate all discretion and authority on the part of the Board of Regents with respect to admissions. Consequently, the proposed amendment would not leave the Board of Regents with "a polity, proper and adequate" for the government of the University. Thus, we are of the opinion that a court would find your proposed amendment to be unconstitutional.

Very truly yours,
PAUL L. DOUGLAS
Attorney General
Harold Mosher
Assistant Attorney General

(Signed)

HM:ejg
cc: Mr. Patrick J. O'Donnell
Clerk of the Legislature

Opinion No. 279
September 24, 1982

Dear Senator Beyer:

You have asked for a definition of the term "full time surveyor" as that term is used in Neb.Rev.Stat. Sec. 32-308 (1982 Supp.), in order to determine if corrective legislation is necessary, to allow county surveyors to retain fees for work done after normal courthouse hours. Although that term has not been defined by statute, "full time" has been defined by the Nebraska Supreme Court in litigation involving "full time" deputy sheriffs. In Grace v. County of Douglas, 178 Neb. 690, 134 N.W.2d 818 (1965), the court states on page 694 as follows:

Websters New International Dictionary (2d Ed.), p. 1018, defines "full time" as follows: "The amount of time considered the normal or standard amount for working during a given period, as a day, week, or month." It is evident that the ordinary meaning of the term and the one we can assume to be embraced within the

legislative intent would be the usual working day for the performance of the duties of the particular office.

In the case of county surveyors, full time would be that amount of time considered to be the usual, normal, or standard work day of a county officer. "Full time" therefore, would not include work performed during hours after a standard or normal work day. Presumably, this would exclude work performed during hours other than normal courthouse hours.

You have further inquired about the retention of fees received by the county surveyor for work performed for individuals after normal courthouse hours. Absent agreement with the county board to the contrary, such fees may be retained by the county surveyor.

Neb.Rev.Stat. Sec. 23-1901.01 (1982 Supp.) provides in pertinent part:

When there is no qualified surveyor within a county who will accept the office of county surveyor, the county board of such county may employ a competent surveyor either on a full-time or part-time basis from any other county of the State of Nebraska to such office. In making such employment, the county board shall negotiate a contract with the surveyor, such contract to specify the terms and conditions of the appointment or employment, including the compensation of the surveyor, which compensation shall not be subject to the provisions of section 33-116.

Because a county surveyor hired by the county board is hired pursuant to contract, it is possible that a term or condition of that employment contract could involve "after hours" employment and the retention of fees for such employment. In such a case, retention of fees for "after hours" work would be governed by the employment contract.

You have inquired about the need for legislation permitting the filing of surveys with the county clerk, when the county surveyor's office is several miles remote from the county courthouse. Currently, surveys of a registered land surveyor must be filed with the survey record repository if the county surveyor does not maintain a regular office in the county courthouse.

Neb.Rev.Stat. Sec. 81-8,122.01 (1982 Supp.) provides in pertinent part:

If no regular office is maintained in the county courthouse for the county surveyor, it shall be filed in the survey record repository.

The repository must, within thirty (30) days of receipt of a survey, transmit a copy of the same to the county. Neb.Rev.Stat. Sec. 84-413(2) (1982 Supp.) provides that the survey record repository shall:

(2) Provide a copy of survey records to the county in which the survey was conducted. Such copy shall be transmitted to the county

within thirty days of its receipt by the repository and at no cost to the county; ...

A copy of a survey transmitted to the county by the repository must be placed on file in the office of the county clerk, if the county surveyor does not maintain an office in the county courthouse. Neb.Rev.Stat. Sec. 81-8,122 (1982 Supp.) provides:

When the county shall receive an official copy of a survey from a registered land surveyor or from the survey record repository established pursuant to section 84-412, such copy shall be placed on file in the office of the county surveyor in the county where the land is located. If no regular office is maintained in the county courthouse for the county surveyor, it shall be placed on file in the office of the county clerk.

Because surveys must be filed with the county clerk after they are filed with the survey record repository under the situation that you describe, we are of the opinion that no problem exists regarding whether such surveys should be "allowed" to be so filed.

Very truly yours,
PAUL L. DOUGLAS
Attorney General

(Signed) John E. Brown
Assistant Attorney General

JEB/ta
cc: Patrick J. O'Donnell
Clerk of the Legislature

Opinion No. 278
September 29, 1982

Dear Senator DeCamp:

In your letter of September 24, 1982, you request our opinion on the constitutionality of a proposal to eliminate the personal property tax on business equipment. Article VIII, Section 2, of the Nebraska Constitution provides that the Legislature may classify personal property in such manner as it sees fit, and may exempt any of such classes. It appears that the proposal to exempt this class of personal property comes squarely within the terms of this constitutional provision. Business equipment appears to be a reasonable class, for the purpose of exemption, and we can see no constitutional impediment to such an exemption.

You also say that to relieve the narrowed tax base, \$25 million would be appropriated from sales and income tax to the counties based on the formula contained therein. Since you did not include with your letter a copy of the proposed reimbursement formula, we obviously

cannot comment upon it. We remind you of the difficulties that were encountered in formulating a valid reimbursement formula after the total exemption of business inventories, agricultural income producing machinery, livestock, etc. Similar difficulties may be encountered in reimbursing the taxing subdivisions for losses incurred because of the imposed exemption. We cannot, however, comment upon these matters without having seen the proposal.

Very truly yours,
PAUL L. DOUGLAS
Attorney General
Ralph H. Gillan
Assistant Attorney General

(Signed)

RHG/pmw
cc: Mr. Patrick J. O'Donnell
Clerk of the Legislature

Opinion No. 280
October 6, 1982

Dear Senator DeCamp:

Following the release of our Opinion No. 278, dated September 30, 1982, in which we concluded that the exemption of business equipment from personal property taxation was constitutionally proper, you sent us a copy of the proposed bill. This contains the formula for distribution of 25 million dollars to counties to compensate them for the narrowed tax base, and you ask whether the formula is constitutionally valid.

Section 3 of the proposed bill provides in part:

The appropriation provided for in section 2 of this act for aid to counties shall be distributed to the various county treasurers of the state on the basis of the ratio of the total amount of property taxes levied by the particular county for county purposes to the total amount of property taxes levied by all counties for county purposes based on the amounts stated in the most recent certificate of taxes levied statement submitted by each county to the State Board of Equalization and Assessment pursuant to section 77-628.

As you will note, this formula is an exact copy of the formula for distribution of state aid to counties contained in Neb.Rev.Stat. Sec. 77-27,137 (1982 Supp.), which was put in by Section 4 of LB 816 in 1982.

In our Opinion No. 226, dated March 24, 1982, to Senator Carsten, we considered that provision, and concluded that it could be defended against constitutional attack, despite some doubt cast upon it by some language in State ex rel. Douglas v. Marsh, 207 Neb. 598, 300 N.W.2d

181 (1980). For your convenience, we are enclosing a copy of that opinion herein.

York and Antelope Counties have filed an application for leave to file an original action in the Supreme Court, attacking the validity of that formula, among other things. If the Supreme Court permits that action to proceed, the issue you inquire about may be resolved, although it is conceivable that that issue will not be reached. If the Supreme Court refuses to permit the original action, it probably will be filed in district court. We can never, of course, predict the outcome of litigation with complete certainty, but we do intend to defend the formula on the bases set forth in Opinion No. 226.

Very truly yours,
PAUL L. DOUGLAS
Attorney General
(Signed) Ralph H. Gillan
Assistant Attorney General

RHG:cw

Enc.

cc: Patrick J. O'Donnell
Clerk of the Legislature
2018 State Capitol
Lincoln, Nebraska 68509

REPORTS

The following reports have been filed in the office of the Clerk of the Legislature:

Report from Nebraska Commission on Law Enforcement and Criminal Justice on evaluation of the Nebraska Crime Victims and Witnesses Program pursuant to Section 81-1843 to 81-1848, R.S. Supp. 1981.

Biennial report of Nebraska Resources Development Fund Act from Natural Resources Commission pursuant to Section 2-3265 (Supp. 1981).

Semi-annual report from Department of Environmental Control showing financial status of Construction Grants Program pursuant to Section 81-1533.

Annual Report and Plan of Work for the Nebraska State Water Planning and Review Process from the Natural Resources Commission in accordance with Section 2-3289.

Statement of deposits to the Highway Cash Fund and Roads Operation Cash Fund of the Department of Roads for the calendar months of April, May, June, July, August, and September in compliance with Section 66-476, R.S. Supp. 1980.

Second biennial report from the Nebraska Power Review Board.

Report of Fall Headcount Enrollments in Nebraska Institutions of Postsecondary Education from 1977 through 1981 from the Nebraska Coordinating Commission for Postsecondary Education.

Annual report of the State of Nebraska Commission on Judicial Qualifications.

First and second quarter reports from the Nebraska Energy Office pursuant to Section 81-1606 RSN (1980).

Quarterly reports from Department of Roads for the Nebraska State Highway Commission of the financial position and operations for months ending March 31, 1982 and June 30, 1982.

Third report from Crime Victim's Reparations Board pursuant to Section 81-1833.

Annual report from the Nebraska Department of Labor, Division of Employment for fiscal year October, 1980 through September 1981.

Annual report of the Nebraska Public Counsel, Ombudsman, pursuant to Section 81-8,251, R.S. Supp. 1980.

Report of Examination of State of Nebraska, Auditor of Public Accounts from Nebraska Department of Revenue pursuant to Section 81-106.

Reports from the State Building Division of proposed lease renewals, requests for construction from the State Building Division for the following:

- Dept. of Public Welfare, Lincoln
- Dept. of Revenue and Economic Div., Norfolk
- Correctional Services, Juvenile Group Home, Lincoln
- Dept. of Labor, Lincoln
- Beltzer Bldg, Grand Island
- Economic Development, Kearney
- Economic Development, Indian Commission, Scottsbluff
- Secretary of State, Kearney
- Dept. of Labor, Columbus

Audits reports from the Auditor of Public Accounts for the following:

Nebraska Power Review Board
Nebraska Public Service Commission
Nebraska Commission on Aging
Department of Public Welfare
Nebraska State Energy Office
Nebraska Game and Parks Commission
Nebraska State Racing Commission
Department of Motor Vehicles
Board of Examiners for Professional Engineers and Architects
Military Department

ANNOUNCEMENT

Mr. Hefner announced the Miscellaneous Subjects Committee will hold a public hearing on LR 370 Horseracing at 10:00 a.m., Tuesday, November 9, 1982 in Room 1113 instead of Room 1517.

LR 223-263 at 1:30 p.m., Tuesday, November 9, 1982 in Room 1113 instead of Room 1517.

ATTORNEY GENERAL'S OPINION

Opinion No. 282
November 5, 1982

Dear Senator Warner:

You have asked us four questions concerning the number of votes necessary for certain actions taken or to be taken in the Special Session set to commence on November 5, 1982. We will answer your questions in the order they were asked.

In your first question you ask if a bill amendatory of appropriations enacted in the regular session is passed without the emergency clause and with 25 votes and signed by the Governor would the sums set forth in such bill be those which the State Board of Equalization is required to utilize in setting tax rates. Neb.Rev.Stat. Sec. 77-2715.01 (Supp. 1982) in subsection (1)(b) provides:

If the Legislature should meet in a special session during any year, the board shall add to the appropriations and express obligations as certified pursuant to subdivision (a) of this subsection, the appropriation for the legislative session, all miscellaneous claims, deficiency bills, and all emergency appropriations and express obligations.

While this subsection does not directly answer the question of what

is to be done if the Legislature meets in special session and reduces previously made appropriations, it seems clear to us that this section does contemplate that the State Board of Equalization and Assessment shall consider the action taken by the Legislature at any special session in determining the rate at which the tax levies shall be set. Further, in subsection (2) of the same section it is provided that the board shall meet within 30 days after each special session of the Legislature and requires the board to take into consideration the appropriations and express obligations for such special session and then establish such rates as may be necessary. It is therefore our opinion that the board must consider the action taken at the special session.

In your second question you ask whether it is correct that 30 votes are required to pass a bill that provides for total appropriations in excess of that recommended by the Governor. You then set forth an example: If the total General Fund appropriation recommended by the Governor is 700 million and the total included in the bill on final reading is 705 million, are 30 votes required. We cannot precisely answer your question in the terms in which you phrase it.

Generally it may be said that the recommendation made to the Legislature by the Governor during the special session will require 25 votes. In this regard we refer you to LB 8 of the special session of last year, Eighty-seventh Legislature, First Special Session. In that special session a bill was introduced which amended the appropriations that had been made in the regular session that same year. That bill was an act relating to appropriations to amend certain appropriation bills that had been previously passed by the Legislature. This action is somewhat different than the action contemplated by Article IV, Section 7, of the Constitution, where the budget bill prepared by the Governor requires a vote of three-fifths of the Legislature in order to exceed such recommendation. Here, the action being taken is not to exceed the recommendation originally made by the Governor but whether to concur as a legislative body in a recommendation of the Governor that previously made appropriations be reduced.

It is axiomatic that the Governor can limit the business to be transacted by the Legislature at a special session called pursuant to his proclamation. It is, however, also quite clear that the Governor may not confront the Legislature with a yes or no proposition with respect to the matter for which they are called. Here, the Governor is proposing to amend appropriations bills which have already been enacted by reducing those previously enacted appropriations by some amount. The refusal of the Legislature to concur in such a reduction would not constitutionally require 30 votes. Rather, it would simply require 25 votes because it is in effect an amendment from a previously established appropriation and not a vote to appropriate more to a particular agency than recommended by the Governor. We therefore believe that should the Governor recommend, as an example a 3 percent reduction in an

agency having an appropriation of one million dollars, the Legislature could refuse to amend that particular section of the previously made appropriation.

To the extent then that you are asking whether or the total recommended budget of the Governor in the special session amounts to a budget recommendation as contemplated by Article IV, Section 7, which would require 30 votes to exceed the Governor's recommendation, our answer to you is probably not, although individual recommendations might require a different answer, depending on the specific recommendation and the specific circumstances which arise.

In your third question you ask: "Is it correct that 25 votes are required to pass a bill, without the emergency clause, that provides for total appropriations that are not in excess of that recommended by the Governor, even though one of the budget programs in a particular agency is in excess of that recommended by the Governor?" We take it in asking this question you are referring to the Governor's proposed amendment to the existing budget bill passed at the last regular session of the Legislature. We take it your question is, in essence, "May the Legislature exceed the recommendations made by the Governor for a particular agency in terms of the reduction in their previously approved budget with only 25 votes as opposed to 30?"

In that context we point out to you that the proposition being advanced to the Legislature is shall the budget be reduced as recommended by the Governor from the sums appropriated at the regular session of the Legislature in 1982. Such a proposition does not involve the question of whether the Legislature is exceeding the Governor's recommendation, thus requiring a 30 vote margin in terms of the budget being presented to the Legislature under Article IV, Section 7. Rather, the question to the Legislature is, given the current fiscal crisis, shall the budget for a particular agency be reduced and if so, by how much. That question does not require a super majority but the ordinary majority of 25 as long as the sums appropriated are not more than those sums appropriated at the regular session of the Legislature in 1982. The limitation upon the Legislature existent in this context is that imposed by the Governor's call.

We must once again caution that this general answer is predicated upon general propositions. If specific questions arise with regard to particular agencies or particular programs within agency budgets, they should individually be analyzed in terms of the general principles here involved.

In your fourth question you ask whether 25 votes would be required to pass an appropriation bill on final reading if the Governor amended his original recommendation to conform with the final reading copy of the bill prior to the final vote. Our answer to this final question is also "yes." Obviously, the Governor may amend his recommendation at

any time and we also refer you to the comments made in response to your first and second questions above in arriving at this conclusion.

Very truly yours,
PAUL L. DOUGLAS
Attorney General
(Signed) Patrick T. O'Brien
Assistant Attorney General

PTO:ejg
cc: Patrick J. O'Donnell
Clerk of the Legislature

ADJOURNMENT

At 10:19 a.m., on a motion by Mr. Lamb, the Legislature adjourned until 9:00 a.m., Tuesday, November 9, 1982.

Patrick J. O'Donnell
Clerk of the Legislature

THIRD DAY - NOVEMBER 9, 1982

LEGISLATIVE JOURNAL

THIRD DAY - NOVEMBER 9, 1982

LEGISLATIVE JOURNAL

**EIGHTY-SEVENTH LEGISLATURE
SECOND SPECIAL SESSION**

THIRD DAY

Legislative Chamber, Lincoln, Nebraska
Tuesday, November 9, 1982

Pursuant to adjournment, the Legislature met at 9:03 a.m., President Luedtke presiding.

PRAYER

The prayer was offered by Rev. Dale Pracht, First Baptist Church, Lincoln, Nebraska.

ROLL CALL

The roll was called and all members were present except Mrs. Marsh, Messrs. Kremer, Marvel, Rumery, and Sieck who were excused; Messrs. Beutler, Burrows, Hoagland, Koch, Wiitala, Mesdames Higgins, Labedz, and the Appropriations Committee who were in Committee deliberation.

CORRECTIONS FOR THE JOURNAL

The Journal for the Second Day was approved.

ATTORNEY GENERAL'S OPINION

Opinion No. 283
November 8, 1982

Dear Senator Lamb:

You have submitted a copy of LB 3 of the 1982 Special Session of the Legislature, and have asked our opinion as to whether the subject matter of the bill falls within the Governor's call for the Special Session. We conclude that it does not.

Article IV, Section 8, of the Nebraska Constitution provides: "The Governor may, on extraordinary occasions, convene the Legislature by proclamation, stating therein the purpose for which they are convened,

and the Legislature shall enter upon no business except that for which they were called together."

In Arrow Club, Inc. v. Nebraska Liquor Control Commission, 177 Neb. 686, 131 N.W.2d 134 (1964), the court, in holding that the legislation involved in that action was void, as not being within the Governor's call, said that the Legislature, while in Special Session, could enact legislation relating to, germane to, and having a natural connection with the purpose for which it was convened.

The Governor's proclamation calling the Legislature into session on November 5, 1982, stated the purpose of the Special Session to be to (1) reduce appropriations approved by the Eighty-seventh Legislature, Second Session, and (2) lapse cash and revolving funds to the state General Fund. By amendment, on November 4, 1982, the Governor added a third purpose, to amend laws relating to the collection of sales tax and use tax, but only for the purpose of providing for an earlier date upon which sales tax and use tax shall become due and payable to the Tax Commissioner.

The question, then, is whether LB 3 is germane to the above purposes. LB 3 would amend Neb.Rev.Stat. Sec. 77-3424 (Reissue 1981). This section is a part of the Political Subdivision Budget Limitation Act of 1979. We will not attempt to fully analyze the operation of that act, but in general it provides for limitations on the increases in anticipated combined receipts which a governing body of a political subdivision may provide for in the adoption of a budget.

Section 77-3424 provides for certain exclusions in the calculation of anticipated receipts from local tax sources. LB 3 provides for an additional exclusion from that calculation, consisting of "funds used to replace reductions in state aid to political subdivisions made by the Legislature after November 1, 1982."

No doubt it will be argued that the introducer anticipates that one area of reduction of appropriations may be that involving state aid to political subdivisions, and that LB 3 is designed to prevent political subdivisions from being squeezed by the Political Subdivision Budget Limitation Act in trying to replace revenues lost by reason of such reductions. The trouble with such an argument is that the bill is not limited to reductions in state aid made by this Special Session, but would include any reductions made in future years. This clearly is not germane to the Governor's call.

Even if the bill were amended to limit its effect to reductions made during this Special Session, we are unable to understand what the bill is intended to do. As we understand it, "anticipated receipts from local tax sources" has relevance only in connection with making up budgets and levying taxes. The budgets were made up in August of 1982, and the mill levies were set on or before September 15, 1982. We know of no way in which the mill levies can now be increased to make up for a shortage in receipts caused by a reduction in state aid. We are therefore

unable to see what LB 3 would accomplish in the way of relieving political subdivisions from the impact of reductions in state aid that may be made by the Legislature in this Special Session.

Very truly yours,
PAUL L. DOUGLAS
Attorney General
(Signed) Ralph H. Gillan
Assistant Attorney General

RHG:ejg
cc: Patrick J. O'Donnell
Clerk of the Legislature

ADJOURNMENT

At 9:10 a.m., on a motion by Mr. V. Johnson, the Legislature adjourned until 9:00 a.m., Wednesday, November 10, 1982.

Patrick J. O'Donnell
Clerk of the Legislature

FOURTH DAY - NOVEMBER 10, 1982**LEGISLATIVE JOURNAL****EIGHTY-SEVENTH LEGISLATURE
SECOND SPECIAL SESSION****FOURTH DAY**

Legislative Chamber, Lincoln, Nebraska
Wednesday, November 10, 1982

Pursuant to adjournment, the Legislature met at 9:05 a.m., Mr. Lamb presiding.

PRAYER

The prayer was offered by Dr. Al Norden, Pastor Emeritus, University Lutheran Chapel, Lincoln, Nebraska.

ROLL CALL

The roll was called and all members were present except Messrs. Kremer, Marvel, Rumery, and Mrs. Marsh who were excused; and Messrs. Duda, V. Johnson, Newell, Schmit, Wesely, and Mrs. Pirsch who were excused until they arrive; and the Appropriations Committee who were in deliberation.

CORRECTIONS FOR THE JOURNAL

The Journal for the Third Day was approved.

REPORT OF REGISTERED LOBBYISTS

In accordance with LB 987, passed in the 1976 session of the Legislature and amended by LB 4 and LB 41 in the 1977 session of the Legislature, the attached is a list of all Lobbyists who have registered as of April 16, 1982 to November 9, 1982. Further lists listing additional lobbyists who have registered will be filed weekly.

(Signed) Patrick J. O'Donnell
Clerk of the Legislature

Bacon, Charles - Lincoln - Nebraska Assn. of Commerce & Industry
(Withdrawn 5/14/82)
Daugherty, Shirley - Lincoln - Nebraska Assn. of Public Employees

(Withdrawn 7/1/82)
 Elrod, Carol - Omaha - Nebraska Wing Civil Air Patrol (Withdrawn 6/14/82)
 Hawk, J. Gary - Lincoln - Nebraska Plumbing, Heating & Cooling Contractors Assn. (Withdrawn 4/1/82)
 Howard, David M. - Lincoln - Association of Nebraska Community Action Agencies (Withdrawn 6/24/82)
 Leland, Kenneth - Lincoln - Veterans of Foreign Wars
 Lombardi, Richard - Lincoln - McCullough, Rose A., & Associates; Tews & Radcliffe (Withdrawn 7/4/82)
 McNeil, Martin J. - Omaha - United Transportation Union (Withdrawn 4-22-82)
 Nielsen, Nancy - Omaha - Jr. League of Omaha (Withdrawn 5/31/82)
 O'Leary, Paul F. - Lincoln - Nebraska State Student Assn. (Withdrawn 4/30/82)
 Overgard, Jesse N. - Littleton, CO - Three M (3M) Company (Withdrawn 5/1/82)
 Priske, Valerie L. - Lincoln - American Federation of State, County, and Municipal Employees (AFSCME)
 Rasmussen, Dennis - Lincoln - Nebraska Cooperative Council
 Ryan, James E. - Lincoln - Nebraska Agri-Business Coalition (Withdrawn 4/16/82); Nebraska Optometric Assn. (Withdrawn 4/30/82)
 Siefkes, Dale E. - Lincoln - Nebraska State School Boards Assn. Tews and Radcliffe -
 Radcliffe, Walter H. - Lincoln - Postal Finance & Postal Savings Co. (Withdrawn 10/6/82)
 Triplett, Larry C. - Lincoln - Nebraska Realtors Assn.
 Welch, Jay L. - Omaha - Nebraska Auto & Truck Salvage, Inc. (Withdrawn 3/31/82)
 Wilson, H. Donald - Omaha - Credit Bureau Services of Omaha
 Wylie, William M. - Elgin - Nebraska Small Schools-Mrs. Maurice Clark (Withdrawn 3/31/82)
 Zanolli, Claudia - Lincoln - Charles F. Noren (Withdrawn 6/1/82)

GENERAL FILE

LEGISLATIVE BILL 2. Title read. Considered.

The Revenue Committee offered the following amendment:

(1)

1. On page 2, in lines 7 and 11 strike "fifteenth" and insert "twenty-fifth".

The amendment was adopted with 30 ayes, 1 nay, 1 present and not

voting, and 17 excused and not voting.

The Revenue Committee offered the following amendment:

(2)

1. On page 8, line 15, strike "January" and insert "April".

2. Strike original section 4.

3. In the title in line 5 after the semicolon insert "and" and in lines 6 and 7 strike "; and to declare an emergency".

The amendment was adopted with 30 ayes, 2 nays, 1 present and not voting, and 16 excused and not voting.

Mr. DeCamp offered the following amendment:

(Amendment on file in the Clerk's Office - AM0002).

Mr. Carsten requested a ruling of the Chair on whether the DeCamp amendment is germane to the "Call" of the Governor.

Mr. Lamb ruled the amendment not germane.

Mr. DeCamp challenged the ruling of the Chair. The question is, "Shall the Chair be overruled?"

Mr. DeCamp requested a record vote on the ruling of the Chair.

Voting in the affirmative, 10:

Chambers	DeCamp	Dworak	Higgins	Kilgarin
Koch	Labedz	Vickers	Wesely	Wiitala

Voting in the negative, 29:

Apking	Barrett	Beutler	Beyer	Burrows
Carsten	Chronister	Clark	Cope	Cullan
Fenger	Goll	Goodrich	Haberman	Hefner
Hoagland	Johnson, L.	Kahle	Lamb	Landis
Nichol	Peterson, H.	Peterson, R.	Remmers	Sieck
Stoney	Von Minden	Wagner	Warner	

Present and not voting, 1:

Newell

Excused and not voting, 9:

Duda	Fowler	Johnson, V.	Kremer	Marsh
Marvel	Pirsch	Rumery	Schmit	

The Chair was sustained with 10 ayes, 29 nays, 1 present and not voting, and 9 excused and not voting.

Mr. Goll asked unanimous consent to be excused until he returns. No objections. So ordered.

Advanced to E & R for Review with 27 ayes, 8 nays, 4 present and not voting, and 10 excused and not voting.

LEGISLATIVE BILL 1. Title read. Considered.

Mr. H. Peterson requested a record vote on the advancement of the bill.

Voting in the affirmative, 35:

Apking	Barrett	Beyer	Carsten	Chronister
Clark	Cope	Cullan	DeCamp	Dworak
Fenger	Fowler	Goodrich	Haberman	Hefner
Higgins	Hoagland	Johnson, L.	Kahle	Kilgarin
Koch	Labeledz	Lamb	Landis	Nichol
Peterson, H.	Peterson, R.	Remmers	Stoney	Vickers
Von Minden	Wagner	Warner	Wesely	Wiitala

Voting in the negative, 3:

Burrows	Chambers	Sieck
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Present and not voting, 2:

Beutler	Newell
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Excused and not voting, 9:

Duda	Goll	Johnson, V.	Kremer	Marsh
Marvel	Pirsch	Rumery	Schmit	

Advanced to E & R for Review with 35 ayes, 3 nays, 2 present and not voting, and 9 excused and not voting.

UNANIMOUS CONSENT - Print in Journal

Messrs. Koch and Vickers asked unanimous consent to print the following amendments to LB 1 in the Journal. No objections. So ordered.

(1)

AM0005

- 1 1. Insert the following new section:
- 2 "Sec. 86. It is the intent of the Legislature
- 3 that the reductions made by this act in appropriations
- 4 to political subdivisions shall be funded to the extent
- 5 originally provided for in law through a supplemental
- 6 appropriation during the 1983 regular session."
- 7 2. Renumber remaining sections accordingly.

(2)

AM0003

- 1 1. Insert the following new section:
- 2 "Sec. 86. It is the intent of the Legislature
- 3 that governing bodies of political subdivisions which
- 4 experience a decrease in anticipated receipts from
- 5 state tax sources as a result of this act deem such
- 6 decrease to be an emergency situation within the
- 7 meaning of sections 23-929 and 77-3428."
- 8 2. Renumber remaining sections accordingly.

Mr. Chambers asked unanimous consent to print the following letter in the Journal. No objections. So ordered.

November 10, 1982

The Honorable Allen Beermann
Secretary of State
State Capitol
Lincoln, NE 68509

Re: Questions raised regarding Senator John DeCamp's election

Dear Mr. Secretary of State,

Not having had the opportunity to research the issues involved, I would, nevertheless, like to make some observations which I hope you and the Attorney General will consider as you "met" on this matter. I am not privy to any official information or facts, so my thoughts are similar to what would emerge, were I to attend your meeting.

1. It is wise that you are proceeding with caution and deliberaion

because a very significant precedent can be set by your action.

2. Senator DeCamp WAS properly and legally registered prior to his name being purged by Antelope County Clerk Eleanor Holm. If the removal were not proper, his legal registration cannot have been nullified by her lone action.

It is important to consider due process issues. In Douglas County, to check on whether a person resides at the address given at registration time, a card is mailed by the Election Commissioner, with instructions to Postal personnel not to forward it, but to return it to the Election Commissioner if the person has moved or is believed to have moved. A letter challenging the person's registration is then sent. (I know people who have been through this series of actions.) The person has the opportunity to respond. Either the registration will be found to be valid or the person has the opportunity to re-register.

Due process is met because the person has NOTICE and an opportunity to be HEARD. None of this occurred in Senator DeCamp's case.

3. The whole matter arose on the basis of the unsupported complaint of a citizen who supported Senator DeCamp's opponent. The citizen had a perfect right to act. However, the Antelope County Clerk ought not to have taken such a serious and drastic step without any type of investigation or corroboration of the citizen's complaint/allegation. A complaint may well provide the foundation for an official inquiry, but it should not lead, unsupported, to a definitive official action which deprives a citizen of the right to cast a ballot and even to assume a public office for which he campaigned.

4. As you know, Mr. Secretary, at least two challenges were made by citizens in my Legislative District, to the alleged residences of people who filed to run against me for the Legislature. Despite the existence of sufficient facts to raise serious question as to whether the persons, in fact, resided where they claimed, your office disallowed the challenges; and the persons were permitted to run.

Your action seems to indicate an unwillingness to disqualify a person from seeking office unless overwhelming and compelling evidence established beyond a reasonable doubt, their lack of qualification. Because the twin rights to run for office and to vote are so essential to the proper functioning of a democracy, your conduct, in this regard, is above reproach. And I think it has established a type of precedent.

5. Legally, a person's domicile is where he says it is, coupled with some evidence that the claim is not a mere subterfuge. If the person maintains a mailing address, property and lays claim to a certain residence, care must be exercised before making a definitive determination that the person does NOT live where claimed.

Had the Antelope County Clerk been circumspect in attempting to protect and vindicate the right to vote, she would not have acted in haste

without investigation, and without giving notice and the chance to be heard before removing a lawfully registered citizen from the voting roll.

6. Whether Senator DeCamp should have been removed from the voting roll, was NOT established in accord with due process requirements. The purpose of due process is not to lay a trap for the purpose of depriving a citizen of a Constitutional right. Its purpose is to make certain that a citizen is NOT deprived of a Constitutional right without observation of all safeguards and principles of fairness requisite to a just determination of the given issue. And had due process been observed, any citizen -- yes, Senator DeCamp is a citizen -- would have been accorded the opportunity to reregister, should such have been indicated by the facts.

My conclusion (I repeat, without having done any research) based on general principles of fairness and due process, is that an attempt has been made to misuse the electoral machinery of the State to accomplish by indirection what was not achieved at the polls, that is to say: the elimination of Senator John DeCamp from the Legislature.

I object.

Sincerely,
(Signed) Ernie Chambers
State Senator

cc: Attorney General Paul Douglas
Senator John DeCamp & others

ADJOURNMENT

At 10:34 a.m., on a motion by Mr. Sieck, the Legislature adjourned until 9:00 a.m., Thursday, November 11, 1982.

Patrick J. O'Donnell
Clerk of the Legislature

FIFTH DAY - NOVEMBER 11, 1982

LEGISLATIVE JOURNAL

FIFTH DAY - NOVEMBER 11, 1982

LEGISLATIVE JOURNAL

**EIGHTY-SEVENTH LEGISLATURE
SECOND SPECIAL SESSION**

FIFTH DAY

Legislative Chamber, Lincoln, Nebraska
Thursday, November 11, 1982

Pursuant to adjournment, the Legislature met at 9:05 a.m., Mr. Lamb presiding.

PRAYER

The prayer was offered by Dr. Lee R. Wigert, Pastor, Faith United Methodist Church, Lincoln, Nebraska.

ROLL CALL

The roll was called and all members were present except Messrs. Marvel, Rumery, and Mrs. Marsh who were excused; and Messrs. Fowler, Newell, and Wiitala who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the Fourth Day was approved.

**SELECT COMMITTEE REPORT
Enrollment and Review**

LEGISLATIVE BILL 2. Placed on Select File.

LEGISLATIVE BILL 1. Placed on Select File as amended.
E & R amendment to LB 1:

- 1 1. In order to conform to Laws 1982, LB761:
- 2 (a) On page 16, line 7, page 17, line 16, and
- 3 page 30, line 24, after "per diems" insert "for state
- 4 employees";
- 5 (b) On page 26, line 10, strike "344,585" and
- 6 insert "334,585"; and
- 7 (c) On page 97, line 9, strike "1,100,00" and
- 8 insert "1,100,000".
- 9 2. On page 103, line 12, before the new matter

10 insert "\$".

(Signed) Karen Kilgarin, Chairperson

ANNOUNCEMENT

Mr. Lamb announced today is Senator Carsten's birthday.

SELECT FILE

LEGISLATIVE BILL 2. Advanced to E & R for Engrossment.

LEGISLATIVE BILL 1. E and R amendments found in this day's Journal were adopted.

Messrs. Koch and Vickers renewed their pending amendment (1), AM0005, found in the Journal on page 49.

Mr. Koch requested a record vote on the Koch-Vickers amendment.

Voting in the affirmative, 13:

Apking	Beyer	Chronister	Goodrich	Higgins
Hoagland	Kilgarin	Koch	Labeledz	Remmers
Sieck	Vickers	Wiitala		

Voting in the negative, 27:

Barrett	Carsten	Clark	Cope	Cullan
Duda	Dworak	Fenger	Goll	Haberman
Hefner	Johnson, L.	Johnson, V.	Kahle	Kremer
Lamb	Landis	Nichol	Peterson, H.	Peterson, R.
Pirsch	Schmit	Stoney	Von Minden	Wagner
Warner	Wesely			

Present and not voting, 5:

Beutler	Burrows	Chambers	DeCamp	Fowler
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Excused and not voting, 4:

Marsh	Marvel	Newell	Rumery
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The Koch-Vickers amendment lost with 13 ayes, 27 nays, 5 present and not voting, and 4 excused and not voting.

Messrs. Koch and Vickers renewed their pending amendment (2), AM0003, found in the Journal on page 49.

Mr. Koch requested a record vote on the Koch-Vickers amendment.

Voting in the affirmative, 12:

Apking	Beyer	Chambers	Fowler	Goodrich
Hoagland	Johnson, V.	Koch	Landis	Newell
Vickers	Wiitala			

Voting in the negative, 30:

Barrett	Beutler	Carsten	Chronister	Clark
Cope	Cullan	Duda	Dworak	Fenger
Goll	Haberman	Hefner	Higgins	Johnson, L.
Kahle	Kilgarin	Kremer	Labeledz	Lamb
Nichol	Peterson, H.	Peterson, R.	Remmers	Sieck
Stoney	Von Minden	Wagner	Warner	Wesely

Present and not voting, 4:

Burrows	DeCamp	Pirsch	Schmit
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Excused and not voting, 3:

Marsh	Marvel	Rumery
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The Koch-Vickers amendment lost with 12 ayes, 30 nays, 4 present and not voting, and 3 excused and not voting.

Mr. Warner offered the following Appropriations Committee amendment:

(Amendment on file in the Clerk's Office - AM0010.)

Mr. H. Peterson requested a record vote on the Appropriations Committee amendment.

Voting in the affirmative, 38:

Barrett	Beutler	Burrows	Carsten	Chronister
Clark	Cope	Cullan	DeCamp	Duda
Dworak	Fowler	Goll	Goodrich	Hefner
Higgins	Hoagland	Johnson, L.	Johnson, V.	Kahle
Kilgarin	Koch	Kremer	Labeledz	Lamb
Landis	Newell	Nichol	Peterson, H.	Peterson, R.

Remmers	Schmit	Sieck	Vickers	Wagner
Warner	Wesely	Wiitala		

Voting in the negative, 6:

Apking	Beyer	Haberman	Pirsch	Stoney
Von Minden				

Present and not voting, 2:

Chambers Fenger

Excused and not voting, 3:

Marsh Marvel Rumery

The Appropriations Committee amendment was adopted with 38 ayes, 6 nays, 2 present and not voting, and 3 excused and not voting.

EASE

The Legislature was at ease from 10:10 a.m. until 11:30 a.m.

RECESS

At 11:35 a.m., on a motion by Mr. Barrett, the Legislature recessed until 12:45 p.m.

AFTER RECESS

The Legislature reconvened at 12:45 p.m., Mr. Lamb presiding.

ROLL CALL

The roll was called and all members were present except Messrs. Marvel, Rumery, and Mrs. Marsh who were excused; and Messrs. Goodrich, Newell, and Mrs. Labedz who were excused until they arrive.

ANNOUNCEMENT

Mr. Lamb announced an Executive Board meeting, Friday, November 11, 1982 in Room 2102 upon adjournment.

SELECT COMMITTEE REPORTS **Enrollment and Review**

Correctly Engrossed

The following bill was correctly engrossed: 2.

(Signed) Karen Kilgarin, Chairperson

SELECT FILE**LEGISLATIVE BILL 1.** Mr. Haberman offered the following amendment:

- 1 1. On page 85, in lines 12 and 13, strike
- 2 "76,671,968" and insert "76,549,710" and insert the
- 3 following new paragraph after line 13:
- 4 "It is the purpose of this reduction in
- 5 appropriation to remove the funding of the Alumni
- 6 Association and the Ombudsman programs at the
- 7 University of Nebraska at Lincoln."
- 8 2. On page 86, in lines 12 and 13 strike
- 9 "20,534,424" and insert "20,383,090"; and after line 13
- 10 insert the following new paragraph:
- 11 "It is the purpose of this reduction in
- 12 appropriation to remove the funding of the Alumni
- 13 Association, the Center for Afghan Studies, and the
- 14 Ombudsman programs at the University of Nebraska at
- 15 Omaha."

Mr. Haberman requested a record vote on his amendment.

Voting in the affirmative, 11:

Apking	Beyer	Burrows	Clark	Cullan
Fenger	Haberman	Higgins	Peterson, R.	Stoney
Von Minden				

Voting in the negative, 29:

Barrett	Carsten	Chambers	Chronister	Cope
Duda	Dworak	Fowler	Goll	Hefner
Hoagland	Johnson, L.	Johnson, V.	Kahle	Kilgarin
Koch	Kremer	Landis	Newell	Nichol
Peterson, H.	Pirsch	Remmers	Schmit	Vickers
Wagner	Warner	Wesely	Wiitala	

Present and not voting, 4:

Beutler DeCamp Lamb Sieck

Excused and not voting, 5:

Goodrich Labedz Marsh Marvel Rumery

The Haberman amendment lost with 11 ayes, 29 nays, 4 present and not voting, and 5 excused and not voting.

Messrs. Cullan, Clark, Stoney, Carsten, Von Minden, Nichol, H. Peterson, Hefner, L. Johnson, R. Peterson, Fenger, Chronister, Beyer, Wagner, Remmers, Sieck, Duda, Kremer, Mesdames Pirsch, and Apking offered the following amendment:

PURPOSE: To reduce the appropriation to the Nebraska Educational Television Commission by \$73,131 for the costs associated with coverage of the Legislature.

On page 70, in line 7, strike "3,822,424" and insert "3,749,293" and in line 9, strike "3,862,424" and insert "3,789,293".

Mr. Landis moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 30 ayes, 7 nays, and 12 not voting.

Mr. Haberman asked unanimous consent to have his name withdrawn from the amendment. No objections. So ordered.

Mr. Fenger requested a record vote on the Cullan et al amendment.

Voting in the affirmative, 20:

Apking	Beyer	Carsten	Chronister	Clark
Cullan	Duda	Fenger	Hefner	Johnson, L.
Kremer	Nichol	Peterson, H.	Peterson, R.	Pirsch
Remmers	Sieck	Stoney	Von Minden	Wagner

Voting in the negative, 24:

Barrett	Beutler	Chambers	DeCamp	Dworak
Fowler	Goll	Goodrich	Haberman	Higgins
Hoagland	Johnson, V.	Kahle	Kilgarin	Koch
Labedz	Lamb	Landis	Newell	Schmit
Vickers	Warner	Wesely	Wiitala	

Present and not voting, 2:

Burrows Cope

Excused and not voting, 3:

Marsh Marvel Rumery

The Cullan et al amendment lost with 20 ayes, 24 nays, 2 present and not voting, and 3 excused and not voting.

Mr. Beutler offered the following amendment:

On page 99, in line 3, strike "556,734" and insert "543,139"; in line 5, strike "806,591" and insert "792,996".

Purpose: To reduce an additional \$13,595 General Funds from the Equal Opportunity Commission.

Mr. Beutler moved for a Call of the House. The motion prevailed with 28 ayes, 0 nays, and 21 not voting.

Mr. Beutler requested a roll call vote on his amendment.

Voting in the affirmative, 19:

Apking	Beutler	Beyer	Cullan	Fenger
Haberman	Hefner	Higgins	Hoagland	Kilgarin
Labedz	Peterson, R.	Pirsch	Remmers	Sieck
Stoney	Vickers	Von Minden	Wesely	

Voting in the negative, 27:

Barrett	Burrows	Carsten	Chambers	Chronister
Clark	Cope	DeCamp	Duda	Dworak
Fowler	Goll	Goodrich	Johnson, L.	Johnson, V.
Kahle	Koch	Kremer	Lamb	Landis
Newell	Nichol	Peterson, H.	Schmit	Wagner
Warner	Wiitala			

Excused and not voting, 3:

Marsh Marvel Rumery

The Beutler amendment lost with 19 ayes, 27 nays, and 3 excused and not voting.

The Chair declared the Call raised.

Mrs. Higgins offered the following amendment:

When any government agency, commission or board hold a

meeting, conference or seminar that they be required to hold such gatherings in state, city, county or school buildings where there is no charge for the meeting rooms or where the charge is less than a private enterprise would charge.

Mr. Cullan requested a ruling of the Chair on whether the Higgins amendment is germane to the "Call" of the Governor.

Mr. Lamb ruled the amendment is not germane.

Mr. Landis moved to suspend the rules, Rule 6, Section 5 and Rule 7, Section 3, and vote on the advancement of LB 1 without further amendment or debate.

Mr. Wiitala moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 29 ayes, 1 nay, and 19 not voting.

Mr. Wiitala moved for a Call of the House. The motion prevailed with 39 ayes, 0 nays, and 10 not voting.

The Landis motion to suspend the rules prevailed with 37 ayes, 9 nays, and 3 excused and not voting.

Mr. H. Peterson requested a record vote on the advancement of the bill.

Voting in the affirmative, 35:

Barrett	Carsten	Chronister	Clark	Cope
Cullan	DeCamp	Duda	Dworak	Fowler
Goll	Goodrich	Hefner	Higgins	Hoagland
Johnson, L.	Johnson, V.	Kahle	Kilgarin	Koch
Kremer	Labedz	Lamb	Landis	Newell
Nichol	Peterson, H.	Remmers	Schmit	Sieck
Vickers	Wagner	Warner	Wesely	Wiitala

Voting in the negative, 9:

Apking	Beyer	Burrows	Chambers	Haberman
Peterson, R.	Pirsch	Stoney	Von Minden	

Present and not voting, 2:

Beutler	Fenger
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Excused and not voting, 3:

Marsh Marvel Rumery

Advanced to E & R for Engrossment with 35 ayes, 9 nays, 2 present and not voting, and 3 excused and not voting.

UNANIMOUS CONSENT - Add Co-Introducers

Messrs. Warner, Cope, Dworak, Carsten, Remmers, Chronister, Kahle, Nichol, Fowler, Goodrich, Hefner, Barrett, Wagner, Kremer, V. Johnson, and Landis asked unanimous consent to have their names added as co-introducers to AM0010 on LB 1. No objections. So ordered.

ANNOUNCEMENT

Mr. Hefner announced an executive session of Miscellaneous Subjects Committee on adjournment Saturday, November 13, 1982.

UNANIMOUS CONSENT - Member Excused

Mr. Koch asked unanimous consent to be excused November 12 and 13. No objections. So ordered.

RECESS

At 3:06 p.m., on a motion by Mr. Duda, the Legislature recessed until 5:00 p.m.

AFTER RECESS

The Legislature reconvened at 5:00 p.m., Mr. Lamb presiding.

ROLL CALL

The roll was called and all members were present except Messrs. Beutler, Beyer, Chambers, DeCamp, Duda, Fenger, Fowler, Haberman, Hoagland, V. Johnson, Koch, Landis, Marvel, Newell, Rumery, Stoney, Vickers, Warner, Wesely, Mesdames Higgins, Labeledz, Marsh, and Pirsch who were excused.

SELECT COMMITTEE REPORTS

Enrollment and Review

Correctly Engrossed

The following bill was correctly engrossed: 1.

(Signed) Karen Kilgarin, Chairperson

Enrollment and Review Changes to LB 1

The following changes, now required to be reported to you for publication in the Journal, have been made to LB 1:

In the Appropriations Committee amendment on page 20, line 22, "7,573,080" has been stricken and "7,808,235" inserted to reflect the total of the funds appropriated.

(Signed) Emory P. Burnett
E & R Attorney

ADJOURNMENT

At 5:05 p.m., on a motion by Mr. Cope, the Legislature adjourned until 10:00 a.m., Friday, November 12, 1982.

Patrick J. O'Donnell
Clerk of the Legislature

SIXTH DAY - NOVEMBER 12, 1982

LEGISLATIVE JOURNAL

SIXTH DAY - NOVEMBER 12, 1982

LEGISLATIVE JOURNAL

**EIGHTY-SEVENTH LEGISLATURE
SECOND SPECIAL SESSION**

SIXTH DAY

Legislative Chamber, Lincoln, Nebraska
Friday, November 12, 1982

Pursuant to adjournment, the Legislature met at 10:00 a.m., Mr. Lamb presiding.

PRAYER

The prayer was offered by Rev. Homer Clements, Pastor, St. Luke United Methodist Church, Lincoln, Nebraska.

ROLL CALL

The roll was called and all members were present except Messrs. Beyer, Duda, Fenger, Kremer, Marvel, Newell, Rumery, and Mrs. Marsh who were excused; and Messrs. Chambers, Cullan, Fowler, Goodrich, Hoagland, V. Johnson, Koch, Wesely, and Mrs. Pirsch who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the Fifth Day was approved.

ATTORNEY GENERAL'S OPINION

Opinion No. 284
November 1, 1982

Dear Senator DeCamp:

You have requested our opinion concerning certain questions relating to the gambling statutes in the State of Nebraska in light of the recent Nebraska Supreme Court case of Contact, Inc. v. State of Nebraska, 212 Neb. 584, N.W.2d (1982). You indicate that you need this information to assist you in drafting legislation regarding the gambling laws. You have specifically asked whether or not slot machines which comply with all existing statutory and constitutional

provisions would be legal at this time.

Defining the term slot machine causes some difficulty. While we have been unable to find any Nebraska cases which specifically define slot machines, there is an extremely large number of cases from other jurisdictions which have offered some definition of slot machine. Some of these cases are collected in the A.L.R. Annotation, Games of Chance or Skill, 135 A.L.R. 104 at 138. While this annotation is quite old, it does make clear that the term slot machines can cover a variety of devices. In fact, the annotation describes slot machines of the lever type, slot vending machines, pinball, marble and bagatelle game machines as well as several others.

We take it that you are describing a machine in which a coin is inserted into a slot and a lever is pulled or a button pushed which starts several circular discs revolving having combinations of colors, numbers, or objects which in specified combinations result in a payoff from the machine of money should a winning combination occur. With this in mind as the working definition in answering your question, we take it that you are asking whether or not a classic slot machine of this type would in fact constitute a lottery.

We do this particularly with respect to your reference to Contact, Inc. v. State which held that pickle cards were lotteries. Pickle cards bear a certain surface kinship with classic slot machines as defined above, in that tabs are pulled on the card revealing combinations of symbols, which when a winning combination is held by the card possessor, entitles that individual to claim a prize. We do not believe, however, that this surface similarity can be said to require the conclusion that a slot machine could be held to be a lottery under the Nebraska Statutes.

We particularly direct your attention to Neb.Rev.Stat. Sec. 28-1101(5) (Reissue 1979) which provides:

Gambling device shall mean any device, machine, paraphernalia, writing, paper, instrument, article, or equipment that is used or usable for engaging in gambling, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine. Lottery tickets and other items used in the playing phases of schemes defined in sections 28-1113 to 28-1116, are not gambling devices within this definition.

And, Neb.Rev.Stat. Sec. 28-1107(1) which provides:

A person commits the offense of possession of a gambling device if he or she manufactures, sells, transports, places, possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody, or use of any gambling device, knowing that it shall be used in the advancement of unlawful gambling activity.

It seems relatively clear to us that this definition would embrace the classic slot machine defined above as a machine. The existence of the

specific definition and the specific prohibition we believe, take a slot machine out of the definition for a lottery contained in Sec. 28-1101(6); lottery being defined as a scheme where something of value is exchanged for chances, the winning chance to be determined by an element of chance and the holders to receive something of value. That, of course, is the classic common law definition of lottery as recognized in Contact, Inc., supra, and prior Nebraska cases. However, that definition cannot be applicable to the definition contained in subparagraph (5) of Sec. 28-1101 since they are obviously trying to define different things. The sections which authorize lotteries and gift enterprises do not speak in terms of machines as such and we believe would, therefore, exclude classically defined slot machines.

For the above reasons, we believe that slot machines would not be legal at this time in the State of Nebraska.

Sincerely,
PAUL L. DOUGLAS
Attorney General
(Signed) Patrick T. O'Brien
Assistant Attorney General

PTO:cw

cc: Patrick J. O'Donnell
Clerk of the Legislature

ADJOURNMENT

At 10:10 a.m., on a motion by Mr. Burrows, the Legislature adjourned until 8:00 a.m., Saturday, November 13, 1982.

Patrick J. O'Donnell
Clerk of the Legislature

SEVENTH DAY - NOVEMBER 13, 1982**LEGISLATIVE JOURNAL****EIGHTY-SEVENTH LEGISLATURE
SECOND SPECIAL SESSION**

Legislative Chamber, Lincoln, Nebraska
Saturday, November 13, 1982

Pursuant to adjournment, the Legislature met at 8:13 a.m., Mr. Clark presiding.

PRAYER

The prayer was offered by Pastor Ray Daniel, College View Seventh Day Adventist Church, Lincoln, Nebraska.

ROLL CALL

The roll was called and all members were present except Mrs. Marsh, Messrs. Marvel, and Rumery who were excused; and Messrs. Beutler, Burrows, Chambers, Haberman, V. Johnson, Koch, Newell, Schmit, Sieck, Stoney, Wesely, Wiitala, Mesdames Higgins, and Labeledz who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the Sixth Day was approved.

ATTORNEY GENERAL'S OPINIONS

Opinion No. 285
November 11, 1982

Dear Senator Warner:

You have asked, for the purpose of determining whether additional legislation is required, whether the State Board of Equalization and Assessment, in setting sales and income tax rates pursuant to Neb.Rev.Stat. Sec. 77-2715.01(1) (Supp. 1982) on or before November 1 of this year, is authorized or required to take into account the fact that the administration of county welfare programs has been transferred to the state, effective July 1, 1983. It is our conclusion that it is required to take such fact into account.

Neb.Rev.Stat. Sec. 68-704 (Reissue 1981) created in each county a

county board of public welfare, and following sections prescribed its duties. Each county board of public welfare had employees, and, obviously, expenses. LB 522, passed in the 1982 session, repealed all the sections dealing with county boards of public welfare, and adopted Neb.Rev.Stat. Sec. 68-717 (Supp. 1982), which provides:

The Department of Public Welfare shall assume the sole responsibility for all public assistance delegated to county boards and administered by the county boards or divisions of public welfare, including, but not limited to, aid to families with dependent children, emergency assistance, general assistance or direct county relief, medical assistance, assistance to the aged, blind, or disabled, crippled children's services, commodities, and food stamps.

Section 68-718 provides for the transfer of all furniture, equipment, books, files, records, and personnel utilized by the county boards of public welfare to the Department of Public Welfare. Section 45 of LB 522 provided that the provisions of the act should become operative on July 1, 1983.

Neb.Rev.Stat. Sec. 84-701 (Reissue 1981) provides for the state's fiscal year to run from July 1 to June 30, but the state board, in setting sales and in some tax rates, sets the income tax rates for taxable years beginning in the subsequent calendar year, and the sales tax rates to be effective from January 1 through December 31 of the year after the setting of the rates. Appropriations, as a rule, and certainly in fiscal years ending in an odd number, will have been made only until June 30, but the sales and income taxes will be collected at the rates prescribed by the state board for the entire calendar year (unless changed pursuant to subsection (2) of Sec. 77-2715.01.) Obviously, then, the rates must be set so as to meet the expected expenses of the state beyond the end of the fiscal year, even though no appropriations have been made for such expenses.

In order to take care of this problem, Sec. 77-2715.01(1) provides in part:

Recognizing that an adequate cash flow is necessary to maintain the orderly implementation of various legislative acts, it is mandatory that the funding of those acts which have a fiscal impact beyond a current appropriations year be considered when setting the sales and income tax rates. Accordingly, the purpose of this subsection is to provide that the State Board of Equalization and Assessment shall set rates based on appropriations and the express obligations of the Legislature for the two succeeding calendar years following the rate-setting date. Such action will provide an adequate cash flow, the orderly implementation of the funding of acts as intended by the Legislature, and eliminate drastic fluctuations in the state sales and income tax rates.

We have in the past had some difficulty in determining precisely

what was intended by the term "express obligations," but we have no difficulty in saying that the assumption of the total responsibility for administration of the county welfare program is such an obligation. The statutes prescribing the duties of the Department of Public Welfare have already been passed, and are on the books. The fact that the department will not assume some of its responsibilities until July 1 of next year is of no significance. It will automatically do so as of that date, and will, of course, have additional expenses by reason thereof.

These expenses are in no different category than any of the other expenses of state government which will occur after June 30, 1983. No appropriations have been made for those expenses, either, but the state board must assume that state government will go on after that date. The board would no more be authorized to ignore the expenses incident to LB 522 than it would be authorized to ignore all of the other expenses of state government after the end of this fiscal year. Section 77-2715.01 requires the board to take such expected expenses, for which appropriations will presumably be made by the Legislature in 1983, into account in setting tax rates.

Very truly yours,
PAUL L. DOUGLAS
Attorney General

(Signed) Ralph H. Gillan
Assistant Attorney General

RHG:ejg
cc: Patrick J. O'Donnell
Clerk of the Legislature

Opinion No. 286
November 11, 1982

Dear Senator Warner:

You have asked the following question:

[M]y question is whether or not the state board when setting the income tax rate must take into consideration a prospective change in the federal income tax law that is scheduled to occur within the calendar year for which the rates are being set.

You ask your question in light of the special legislative session currently proceeding. This legislative session occurred as a result of a determination made by the Governor that the fiscal condition of the state was such that the budget adopted by the Eighty-seventh Legislature, Second Session, 1982, had to be reduced.

Two other factors enter into this consideration. The first is the requirement of Neb.Rev.Stat. Sec. 77-2715.01 (Supp. 1982) that the State Board of Equalization and Assessment meet on or before

November 15 of each year to set the rate of taxation for the subsequent calendar year. In addition, under Neb.Rev.Stat. Sec. 77-2715.02(4) the State Board of Equalization is required to meet whenever the accumulated total receipts of the General Fund at the end of any quarter or fiscal year are less than 95 percent of the projected receipts for such period as determined by the State Tax Commissioner.

You point out in your letter that pursuant to federal legislation it is anticipated that a 10 percent reduction in federal taxation for individual income tax rates will take effect on July 1, 1983. You also point out that certain other federal tax changes will occur, including deductions for contributions to individual retirement accounts, net operating loss carry forward periods, and an offset of the "marriage penalty" and will have a significant impact on individual income tax rates under the federal system.

The Legislature in the last regular session adopted LB 693 which amended Sec. 77-2715.01(2). That section had previously required a meeting within 30 days after receiving a report of the Tax Commissioner that there had been significant changes in the provisions of the Internal Revenue Code. LB 693 provides that such a meeting must be held not later than 60 days after passage or approval of such changes or within 15 days prior to the effective date of any changes if the federal changes would increase or decrease projected income in any 12 month period by an amount equal to or greater than the revenue raised from such sources by one-half percent tax rate increment. The amendment also required the board to adjust the rate of income tax so that the taxes levied, as nearly as possible, would equal income which would have occurred had there been no change.

Your question then goes to the exact requirements facing the Board of Equalization at their meeting scheduled for November 15. In making this determination we must examine the provisions of Neb.Rev.Stat. Sec. 77-2715.01 and Sec. 77-2715.02 (Supp. 1982). Section 77-2715.01 is divided into three subparts. The first part deals with the regular annual meeting of the state board for purposes of prospectively establishing sales and income tax rates for the following calendar year. Subsection (2) deals with meetings of the board within 15 days after adjournment of a regular session of the Legislature, within 30 days after a meeting of a special session of the Legislature, and the above referred amendment of the last session where a change has occurred in federal tax laws. The third paragraph deals with the public notice required of the Tax Commissioner that is to be published regarding such meetings.

Section 77-2715.02 provides a third method of calling a meeting and that is when receipts are less than 95 percent or more than 100 percent of projected receipts for the fiscal year. It also authorizes the Governor to call a meeting at any time there is a need to review General Fund cash flow or in response to revisions in revenue projections as set forth

therein.

It can thus be seen that there are a variety of triggering mechanisms which may result in a meeting of the State Board of Equalization and Assessment. The particular meeting to which you refer falls within two of the categories described above, that is, the regular annual meeting and the meeting as a result of shortfalls in receipts as compared with previous projections. The November 15 meeting is not occurring under subsection (2) of Sec. 77-2715.01. We therefore believe that the provisions of subsection (2) need not concern the State Board of Equalization at their November 15 meeting. That being the case, we must analyze the provisions of subsection (1) to determine what requirements face the state board at the November 15 meeting.

In this regard, the first two paragraphs of the subsection provide that the meeting is for the purpose of setting the income and sales tax rates for the succeeding calendar year. The sections require that acts having fiscal impact be considered. It requires the rates be set based on appropriations and express obligations for the two succeeding calendar years following the date of the meeting. The section also provides, "Such action will provide an adequate cash flow, the orderly implementation of funding of acts as intended by the Legislature, and eliminate drastic fluctuations in the state sales and income tax rates." Subsections (a) through (h) then set out steps to be followed by the board in making their determination as to the appropriate rates to be set. The board is first required to determine the status of appropriations and express obligations from a certified statement prepared by the Director of Administrative Services. They are to add, then, the appropriations and express obligations resulting from a special session of the Legislature. They then determine the balance of the General Fund at the beginning of the period under consideration and the estimated receipts to the General Fund from all sources for that same period.

Next, the board is required to set the rates so that the funds available will be not less than 2 nor more than 7 percent in excess of appropriations and express obligations for the two succeeding calendar years. The section defines express obligations as follows: "For purposes of this section, express obligation shall mean an obligation which has a fiscal impact identifiable by a sum certain or by an established percentage or other determinative factor or factors."

It is clear that the board is required to set rates which will provide an adequate cash flow and to eliminate drastic fluctuations in sales and income tax rates. It is obvious that they are required to consider legislative acts to be funded in the subsequent fiscal year and other items which may be considered express obligations about which more will be said later. They are required to determine the balance in the General Fund at the beginning of the period under consideration and the estimated receipts to the General Fund from all sources for that

same period. The board is required to then establish the rates at a level which will provide a cushion of not less than 2 percent or more than 7 percent in excess of the appropriations and express obligations.

It is relatively obvious that "appropriations" is not a difficult concept. It is also relatively obvious that express obligations, notwithstanding the definitions provided, is less clear. This office in Report of the Attorney General, 1975-1976, Opinion No. 141, page 201, expressed some reservation with regard to the language "express obligation" as contained within this statute and as defined within the Nebraska Sales and Income Tax provisions. We there said:

We do not believe that the definition found in Section 77-2715.01 is helpful. It attempts to define "express obligations" by the use of the word "obligation" and does not define what an obligation is. To what extent is the Legislature "obligated" to finance programs for which it has not yet appropriated money? . . . There are many programs which, as a political matter, the Legislature is certain to continue, but can we say they are "obligations?" We think not.

To the extent that "express obligations" have been identified, they can, and should be taken into account. Some are identified in Section 77-2715.03(1). We believe that in some cases the Legislature, in enacting statutes dealing with certain programs, have said that those programs should be considered express obligations by the state board. Where that has happened, the board should obey the legislative mandate.

The definitions contained in Neb.Rev.Stat. Sec. 77-2715.03 and Sec. 77-2715.01 referred to in Opinion No. 141, have not been changed. We adhere to the views expressed in that opinion. It is therefore our belief that the term "express obligation" is such that it is not useful in determining whether or not changes in the tax laws are of necessity to be considered by the state board setting tax rates at the November 15 meeting.

We nonetheless believe that the board is required to determine what the estimated receipts from sales, use, income and franchise taxes will be for the upcoming fiscal year. In making that determination, we believe the board must deal with both the currently existing federal tax provisions and those provisions which are to become effective during the calendar year. Since our state tax system is piggybacked on to the federal system, anything which will affect the amount of federal income tax paid will obviously affect the amount of state income tax paid and thus have an effect on anticipated receipts in the coming calendar year. This may require some speculation but that is inherent in the system we follow. While it is possible that the prospective tax decrease may not in fact occur, it is equally, if not more possible, that the decrease will occur. Under these conditions we believe the board must consider the effect the decrease may have on receipts under (1)(a) and (1)(c) and must set

the rates of sales and income tax so that receipts will be sufficient to meet the requirement of (1)(d) that there be an adequate General Fund balance. These requirements all arise under the first subsection of Sec. 77-2715.01.

Very truly yours,
 PAUL L. DOUGLAS
 Attorney General
 (Signed) Patrick T. O'Brien
 Assistant Attorney General

PTO:ejg
 cc: Patrick J. O'Donnell
 Clerk of the Legislature

MR. LAMB PRESIDING

BILL ON FINAL READING

The following bill was read and put upon final passage:

LEGISLATIVE BILL 1. With Emergency.

A BILL FOR AN ACT relating to appropriations; to amend Laws 1982, LB 761, sections 3 to 14, 16 to 18, 20, 21, 23 to 29, 31, 33 to 35, 37, 38, 44 to 53, 60, 61, 63 to 67, 70 to 80, 82, 107, 108, 109, 116, 120, 121, 127, and 133, Laws 1981, LB 163, section 3, as last amended by Laws 1982, LB 761, section 118, Laws 1982, LB 604A, section 1, Laws 1982, LB 714A, section 1, Laws 1982, LB 816A, sections 1, 2, and 4 to 6, and Laws 1982, LB 854A, section 1; to provide powers and duties; to reduce appropriations; to provide transfers from certain funds to the General Fund; to repeal the original sections, and also Laws 1982, LB 761, section 132; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?' "

Voting in the affirmative, 40:

Apking	Barrett	Beutler	Beyer	Carsten
Chronister	Clark	Cope	Cullan	DeCamp
Duda	Dworak	Fenger	Fowler	Goll
Goodrich	Hefner	Higgins	Hoagland	Johnson, L.
Johnson, V.	Kahle	Kilgarin	Kremer	Labeledz
Lamb	Landis	Nichol	Peterson, H.	Peterson, R.
Pirsch	Remmers	Schmit	Sieck	Vickers
Von Minden	Wagner	Warner	Wesely	Wiitala

Voting in the negative, 1:

Stoney

Excused and not voting, 8:

Burrows	Chambers	Haberman	Koch	Marsh
Marvel	Newell	Rumery		

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

MESSAGE FROM THE GOVERNOR

November 13, 1982

The Honorable Howard Lamb
Chairman, Executive Board
of the Legislative Council
The Honorable Jerry Warner
Chairman, Appropriations Committee
Nebraska Legislature
State Capitol
Lincoln, Nebraska

Dear Howard and Jerry:

LB 1 and LB 2 as they seem likely to be presented to you for final reading have been carefully reviewed by me. The course of action followed is one wherein all of us in government and many in private business join together to meet State fiscal responsibilities in difficult times. State agencies have received a small reduction in appropriations for operations; political sub-divisions have received a small reduction in state aid; and business joins in by advancing the payment date of the sales tax by a few days.

As you know, I have a high regard for the integrity of the Nebraska Unicameral. You have approached the problem in a bi-partisan manner and in the spirit of compromise. I have done the same. Though some exception is taken to a number of your individual recommendations, you are advised that should LB 1 and LB 2 reach my desk in the form given me yesterday, both will be signed forthwith.

These actions will be of substantial help to enable the impact of the economic recovery to be reflected in adequate state tax receipts.

Sincerely,

(Signed) CHARLES THONE
Governor

BILL ON FINAL READING

The following bill was read and put upon final passage:

LEGISLATIVE BILL 2.

A BILL FOR AN ACT to amend section 77-2708, Reissue Revised Statutes of Nebraska, 1943, relating to revenue and taxation; to change the due date for sales and use taxes as prescribed; to provide an operative date; and to repeal the original section.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 41:

Apking	Barrett	Beyer	Burrows	Carsten
Chronister	Clark	Cope	Cullan	DeCamp
Duda	Dworak	Fenger	Fowler	Goll
Goodrich	Hefner	Higgins	Hoagland	Johnson, L.
Johnson, V.	Kahle	Kilgarin	Kremer	Labeledz
Lamb	Landis	Nichol	Peterson, H.	Peterson, R.
Pirsch	Remmers	Schmit	Sieck	Stoney
Vickers	Von Minden	Wagner	Warner	Wesely
Wiitala				

Voting in the negative, 1:

Beutler

Excused and not voting, 7:

Chambers	Haberman	Koch	Marsh	Marvel
Newell	Rumery			

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

MOTION - Suspend Rules

Mr. Landis moved to suspend the rules, Rule 4, Section 6 to permit the consideration of LR 1 today.

The motion prevailed with 42 ayes, 0 nays, and 7 excused and not voting.

RESOLUTION

LEGISLATIVE RESOLUTION 1.

Introduced by Apking, 32nd District; Barrett, 39th District; Beutler, 28th District; Beyer, 3rd District; Burrows, 30th District; Carsten, 2nd District; Chronister, 18th District; Clark, 47th District; Cope, 36th District; Cullan, 49th District; DeCamp, 40th District; Duda, 14th District; Dworak, 22nd District; Fenger, 45th District; Fowler, 27th District; Goll, 16th District; Goodrich, 20th District; Hefner, 19th District; Hoagland, 6th District; L. Johnson, 15th District; V. Johnson, 8th District; Kahle, 37th District; Kilgarin, 7th District; Kremer, 34th District; Labedz, 5th District; Lamb, 43rd District; Landis, 46th District; Nichol, 48th District; H. Peterson, 35th District; R. Peterson, 21st District; Pirsch, 10th District; Remmers, 1st District; Schmit, 23rd District; Sieck, 24th District; Stoney, 4th District; Vickers, 38th District; Von Minden, 17th District; Wagner, 41st District; Warner, 25th District; Wesely, 26th District; Wiitala, 31st District.

WHEREAS, Governor Charles Thone has for four years followed a policy of working in cooperation with the Legislature in the best interest of all Nebraskans; and

WHEREAS, for four years Governor Charles Thone has conducted an Administration known for honesty and integrity; and

WHEREAS, Governor Charles Thone has consistently supported open government, open meeting laws, open record laws and the right of the people to know what their government is doing, and has insisted that his Department heads so conduct themselves; and

WHEREAS, Governor Charles Thone has conducted an Administration known for economy and efficiency; and

WHEREAS, Governor Charles Thone appointed a greater percentage of women to state boards and commissions than ever before in the history of Nebraska and appointed one of the few women Constitutional Officers in the history of Nebraska; and

WHEREAS, Governor Charles Thone strongly supported the successful passage of the State's first affirmative action legislation during his first year in office; and

WHEREAS, Governor Charles Thone worked long and hard to promote agricultural exports and played a key role in opening agricultural trade between Nebraska producers and the People's Republic of China; and

WHEREAS, Governor Charles Thone opened lines of

communication between Nebraska's many competing water interests and supported passage of several important new water laws to strengthen local control of water resources and acted to preserve and protect Nebraska's water resources; and

WHEREAS, Governor Charles Thone supported many policies and administrative actions to help preserve and foster Nebraska's business climate and has helped keep Nebraska's unemployment rate among the lowest in the United States; and

WHEREAS, Governor Charles Thone worked for the good of all Nebraskans and not the special interests of a few;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE EIGHTY-SEVENTH LEGISLATURE OF NEBRASKA, SECOND SPECIAL SESSION:

1. That we commend Governor Charles Thone for his dedicated service to the people of the State of Nebraska, and wish him success in his future endeavors.

2. Be it further resolved that the Nebraska Legislature extends its grateful thanks to Ruth Thone who has graced our state with her compassion and commitment as Nebraska's First Lady.

3. The Clerk shall prepare copies of the text to be sent to Governor Charles Thone, Mrs. Ruth Thone, and the permanent archives of the Nebraska State Historical Society.

Mr. Cullan requested a record vote on the adoption of LR 1.

Voting in the affirmative, 41:

Apking	Barrett	Beutler	Beyer	Burrows
Carsten	Chronister	Clark	Cope	Cullan
DeCamp	Duda	Dworak	Fenger	Fowler
Goll	Goodrich	Hefner	Hoagland	Johnson, L.
Johnson, V.	Kahle	Kilgarin	Kremer	Labeledz
Lamb	Landis	Nichol	Peterson, H.	Peterson, R.
Pirsch	Remmers	Schmit	Sieck	Stoney
Vickers	Von Minden	Wagner	Warner	Wesely
Wiitala				

Voting in the negative, 0.

Present and not voting, 1:

Higgins

Excused and not voting, 7:

Chambers	Haberman	Koch	Marsh	Marvel
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Newell Rumery

LR 1 was adopted with 41 ayes, 0 nays, 1 present and not voting, and 7 excused and not voting.

PRESIDENT LUEDTKE PRESIDING

PRESIDENT SIGNED

While the Legislature was in session and capable of transacting business, the President signed the following bills: 1 and 2.

MR. LAMB PRESIDING

MOTION - Suspend Rules

Mr. Dworak moved to suspend the rules, Rule 4, Sec 6 to permit consideration of LR 2 today.

The motion prevailed with 42 ayes, 0 nays, and 7 excused and not voting.

RESOLUTION

LEGISLATIVE RESOLUTION 2.

Introduced by Apking, 32nd District; Barrett, 39th District; Beutler, 28th District; Beyer, 3rd District; Burrows, 30th District; Carsten, 2nd District; Chronister, 18th District; Clark, 47th District; Cope, 36th District; Cullan, 49th District; DeCamp, 40th District; Duda, 14th District; Dworak, 22nd District; Fenger, 45th District; Fowler, 27th District; Goll, 16th District; Goodrich, 20th District; Hefner, 19th District; Higgins, 9th District; Hoagland, 6th District; L. Johnson, 15th District; V. Johnson, 8th District; Kahle, 37th District; Kilgarin, 7th District; Kremer, 34th District; Labedz, 5th District; Lamb, 43rd District; Landis, 46th District; Newell, 13th District; Nichol, 48th District; H. Peterson, 35th District; R. Peterson, 21st District; Pirsch, 10th District; Remmers, 1st District; Schmit, 23rd District; Sieck, 24th District; Stoney, 4th District; Vickers, 38th District; Von Minden, 17th District; Wagner, 41st District; Warner, 25th District; Wesely, 26th District; Wiitala, 31st District.

WHEREAS, Roland Luedtke served the state for twelve years as a state senator during which time he held the positions of chairman of the Judiciary Committee and Speaker of the Legislature; and

WHEREAS, Roland Luedtke has demonstrated exceptional leadership in corrections and criminal justice matters; and

WHEREAS, Roland Luedtke has, as Lieutenant Governor of the State of Nebraska for four years, served as President of the Legislature and headed the Nebraska 2000 Committee.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE EIGHTY-SEVENTH LEGISLATURE OF NEBRASKA, SECOND SPECIAL SESSION:

1. That the Legislature thanks Roland Luedtke for serving as presiding officer in a fair and firm manner.

2. That the Clerk of the Legislature send a copy of this resolution to Roland Luedtke.

Mrs. Higgins requested a record vote on the adoption of LR 2.

Voting in the affirmative, 43:

Apking	Barrett	Beutler	Beyer	Burrows
Carsten	Chronister	Clark	Cope	Cullan
DeCamp	Duda	Dworak	Fenger	Fowler
Goll	Goodrich	Hefner	Higgins	Hoagland
Johnson, L.	Johnson, V.	Kahle	Kilgarin	Kremer
Labeledz	Lamb	Landis	Newell	Nichol
Peterson, H.	Peterson, R.	Pirsch	Remmers	Schmit
Sieck	Stoney	Vickers	Von Minden	Wagner
Warner	Wesely	Wiitala		

Voting in the negative, 0.

Excused and not voting, 6:

Chambers	Haberman	Koch	Marsh	Marvel
Rumery				

LR 2 was adopted with 43 ayes, 0 nays, and 6 excused and not voting.

PRESIDENT LUEDTKE PRESIDING

ANNOUNCEMENT

Mr. Lamb presented a certificate of appreciation to Mr. Emory Burnett, E & R attorney, for his twenty-six years of service to the Legislature.

PRESENTED TO THE GOVERNOR

Presented to the Governor on November 13, 1982, at 9:50 a.m., were the following bills: 1 and 2.

(Signed) Emory P. Burnett
E & R Attorney

VISITORS

Visitors to the Chamber were Barry Spargo, Kimball; Bill Applegate, Syracuse; and Weldon Hoppe, Farnam.

MOTION - Disposition of Bills

Mr. Dworak moved that all bills not otherwise disposed of, excluding vetoed or line-item vetoed bills on this date, be indefinitely postponed.

The motion prevailed.

MOTION - Approve Journal

Mr. Kremer moved that the Legislative Journal for the Seventh Day be approved as prepared by the Clerk.

The motion prevailed.

MOTION - Adjournment

Mr. Stoney moved that the Eighty-Seventh Legislature, Second Special Session of the Legislature having finished all business before it, now at 9:56 a.m. adjourn sine die.

The motion prevailed.

Patrick J. O'Donnell
Clerk of the Legislature

RECEIVED AFTER ADJOURNMENT**LEGISLATIVE JOURNAL****EIGHTY-SEVENTH LEGISLATURE
SECOND SPECIAL SESSION****MESSAGE FROM THE GOVERNOR**

November 13, 1982

Mr. Patrick J. O'Donnell
Clerk of the Legislature
State Capitol
Lincoln, Nebraska 68509

Dear Mr. O'Donnell:

Engrossed Legislative bills 1 and 2 were received in my office on November 13, 1982.

These bills were signed by me on November 13, 1982 and have been delivered to the office of the Secretary of State today.

(Signed) Sincerely,
CHARLES THONE
Governor

MESSAGE FROM THE SECRETARY OF STATE

November 15, 1982

Mr. Patrick J. O'Donnell
Clerk of the Legislature
Room 2018
State Capitol
Lincoln, Nebraska 68509

Dear Mr. O'Donnell:

Enclosed herewith are two certifications, reference to Legislative Bill One and Legislative Bill Two, passed by the 1982 Legislature of Nebraska at its second special session.

These bills were hand delivered to my office on Saturday, November 13 at 10 o'clock a.m., filed and made a part of the public record.

Please place these two certifications in the special session journal prior to closing the journal.

(Signed) Sincerely,
ALLEN J. BEERMANN
Secretary of State

Enclosures: 2

CERTIFICATES

State of Nebraska
Department of State

I, Allen J. Beermann, Secretary of State of the State of Nebraska do hereby certify that engrossed Legislative Bill 1 passed by the Eighty-seventh Legislature, with Emergency Clause, at its second special session was duly filed in my office on Saturday, November 13, 1982 at 10 o'clock a.m. and further, I hereby certify that the engrossed Legislative Bill 1 was signed by President of the Legislature, Roland Luedtke, Clerk of the Legislature Patrick J. O'Donnell and approved and signed by the Governor on November 13, 1982 at 9:45 o'clock a.m.

Finally, I hereby certify that enclosed Legislative Bill 1 is on file and is a matter of public record in the office of Secretary of State.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State of Nebraska. Done at Lincoln this fifteenth day of November in the year of our Lord, one thousand nine hundred and eighty-two.

(SEAL)

(Signed) ALLEN J. BEERMANN
Secretary of State
(Signed) Ralph Englert
Deputy

State of Nebraska
Department of State

I, Allen J. Beermann, Secretary of State of the State of Nebraska do hereby certify that engrossed Legislative Bill 2 passed by the Eighty-seventh Legislature, at its second special session was duly filed in my office on Saturday, November 13, 1982 at 10 o'clock a.m. and further, I hereby certify that the engrossed Legislative Bill 2 was signed by President of the Legislature, Roland Luedtke, Clerk of the

Legislature Patrick J. O'Donnell and approved and signed by the Governor on November 13, 1982 at 9:50 a.m.

Finally, I hereby certify that engrossed Legislative Bill 2 is on file and is a matter of public record in the office of Secretary of State.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State of Nebraska. Done at Lincoln this fifteenth day of November in the year of our Lord, one thousand nine hundred and eighty-two.

(SEAL)

(Signed) ALLEN J. BEERMANN
Secretary of State

(Signed) Ralph Englert
Deputy

CERTIFICATE

I, Patrick J. O'Donnell, Clerk of the Legislature, hereby certify that the foregoing communications are true and correct copies of letters provided concerning action on bills after adjournment of the Eighty-seventh Legislature, Second Special Session and other correspondence.

(Signed) Patrick J. O'Donnell
Clerk of the Legislature

November 17, 1982
Lincoln, Nebraska

CHRONOLOGY OF BILLS

EIGHTY-SEVENTH LEGISLATURE SECOND SPECIAL SESSION 1982

LEGISLATIVE BILL 1 By Lamb at request of Governor

Nov. 5	Read first time. Placed on General File	8
Nov. 10	Advanced for Review	48
Nov. 10	Koch and Vickers amendments (1) and (2) printed	49
Nov. 11	Placed on Select File	52
Nov. 11	E and R amendments adopted. Koch-Vickers pending amendment (1) lost	53
Nov. 11	Koch-Vickers pending amendment (2) lost. Appropriations Committee amendment adopted ..	54
Nov. 11	Haberman amendment lost	56
Nov. 11	Cullan, Clark, Stoney, Carsten, Von Minden, Nichol, H. Peterson, Hefner, L. Johnson, R. Peterson, Fenger, Chronister, Beyer, Wagner, Remmers, Sieck, Duda, Kremer, Pirsch, and Apking amendment lost. Haberman withdrew name from amendment	57
Nov. 11	Beutler amendment lost. Higgins amendment ruled not germane	58
Nov. 11	Landis motion to suspend rules prevailed.	59
Nov. 11	Advanced for Engrossment. Warner, Cope, Dworak, Carsten, Remmers, Chronister, Kahle, Nichol, Fowler, Goodrich, Hefner, Barrett, Wagner, Kremer, V. Johnson, and Landis names added to Appropriations Committee amendment. Correctly Engrossed	60
Nov. 11	E and R changes	61
Nov. 13	Final Reading	71
Nov. 13	Governor letter	72
Nov. 13	President signed	76
Nov. 13	Presented to Governor	77
Nov. 17	Approved by Governor (11-13). Letter. Certificate	79

LEGISLATIVE BILL 2 By Lamb at request of Governor

Nov. 5	Read first time. Placed on General File	8
Nov. 10	Committee amendment (1) adopted	46
Nov. 10	Committee amendment (2) adopted	47

Nov. 10	DeCamp amendment ruled not germane.	
	Advanced for Review	48
Nov. 11	Placed on Select File	52
Nov. 11	Advanced for Engrossment	53
Nov. 11	Correctly Engrossed	56
Nov. 13	Governor letter	72
Nov. 13	Final Reading.	73
Nov. 13	President signed.	76
Nov. 13	Presented to Governor	77
Nov. 17	Approved by Governor (11-13).	
	Letter. Certificate	79

LEGISLATIVE BILL 3 By Koch

Nov. 5	Read first time	10
Nov. 9	Attorney General's Opinion	42
Nov. 13	Indefinitely postponed	78

LEGISLATIVE BILLS**By Original Introducers****GERALD KOCH**

- 3 Change provisions relating to budget limitations.

HOWARD LAMB

- 1* Reduce budget for 1982-83 fiscal year; authorize interfund transfers.
- 2* Change due date for submission of sales and use taxes.
- * At the request of the Governor.

SUMMARY OF LEGISLATIVE BILLS

Eighty-Seventh Legislature, Second Special Session

Total number of bills introduced	3
Total number of resolutions introduced	2

Approved by the Governor, 2:

1	2
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Indefinitely postponed, 1:

3

Resolutions adopted, 2:

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